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IN THE

# Supreme Court of the United States

OCTOBER TERM 1963

No. 794

THE CURTIS PUBLISHING COMPANY,
*Petitioner,*

*v.*

HONORABLE H. H. GROOMS, United States District Judge for the Northern District of Alabama, and PAUL BRYANT,
*Respondents.*

# PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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No.

THE CURTIS PUBLISHING COMPANY,
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HONORABLE H. H. GROOMS, United States District Judge for the Northern District of Alabama, and PAUL BRYANT,
*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Fifth Circuit entered on January 13, 1964. The order denied petitioner's application for a writ of mandamus directed to the District Judge.

### Opinions Below

The opinions of the District Court are unreported as of this date. They are printed in Appendix A hereto, *infra*, pp. 28a-31a and 39a-40a. There was no opinion in the Court of Appeals.

## Jurisdiction

The order of the Court of Appeals was entered on January 13, 1964 (Appendix B). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).*

## Question Presented

Whether petitioner's constitutional rights and the interests of justice require that the actions brought against it in the United States District Court for the Northern District of Alabama be transferred to a District Court without Alabama to assure to petitioner a right to a trial of the issues before a fair and impartial jury?

## Statutes Involved

U. S. CONST. amend. V.

> "No person shall * * * be deprived of life, liberty, or property, without due process of law * * *".

U. S. CONST. amend. VII—*Civil Trials.*

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved * * *".

28 U.S.C. §1404(a). *Change of Venue.*

> "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

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* That this is the appropriate procedure to follow is settled by *Dairy Queen* v. *Wood*, 369 U. S. 469. Other cases in which writs of certiorari have been granted by this Court to review determinations made by Courts of Appeal on petitions for mandamus include *Minnesota Mining and Manufacturing Company* v. *Platt*, 7th Cir., 314 F. 2d 369 cert. granted 374 U. S. 825; *Barrack* v. *Van Dusen*, 3rd Cir., 309 F. 2d 953, cert. granted 372 U. S. 964; *Parsons* v. *Chesapeake & Ohio Railway Co.*, 7th Cir., 307 F. 2d 924, cert. granted 371 U. S. 946.

## Statement

Petitioner is a defendant in two civil actions for libel which are pending in the United States District Court for the Northern District of Alabama, Southern Division, wherein plaintiff is Paul Bryant, the athletic director and head football coach at the University of Alabama. Both actions are based upon articles which have appeared in petitioner's publication, The Saturday Evening Post.

In the first action, plaintiff claims the sum of $500,000 as damages; and in the second, he claims $10,000,000. The latter is based on an article published in March, 1963, entitled "The Story of a Football Fix", and has been set for trial for February 10, 1964.*

On August 12, 1963, petitioner filed identical motions in each action seeking a transfer to a forum outside the State of Alabama pursuant to 28 U.S.C. §1404(a). The grounds upon which the motion was based were that the transfer was necessary for the convenience of parties and witnesses, and was in the interest of justice. The latter ground was asserted on petitioner's contention that it could not receive a fair trial in Alabama** because of plaintiff's great popularity in that state, and the concomitant bias, hatred and prejudice existing against it there. The motions in the two cases were consolidated and were denied by the District Judge in an opinion and order dated October 31, 1963. On November 7, 1963 petitioner filed an application for rehearing, which was based in part upon the fact that one day after the Court had denied the motions to transfer, plaintiff's counsel, together with the Jackson, Mississippi law firm of Governor Ross Barnett (Barnett, Montgomery, McClintock & Cunningham) had filed a libel action against petitioner in the Northern District of Alabama, in which Colonel T. B. Birdsong, suing on behalf of himself and other men of the Mississippi Highway Patrol, was named as plaintiff. The suit was based on an alleged libel appearing in petitioner's publication The Saturday Evening Post, on November 10, 1962, entitled "What next in Mississippi?", and sought damages in the sum of $1,000,000. Although the claim for relief in that action was based entirely on events which took place in Mississippi, and had nothing at all to do with Alabama, the latter was nevertheless selected as the trial forum because the bias and prejudice that exists in Alabama is such that it would preclude petitioner from having a trial before a fair and impartial jury.

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* The other person claimed to have been libeled by this article, Wallace Butts, athletic director of the University of Georgia, brought a separate action against petitioner in the United States District Court for the Northern District of Georgia (Civ. No. 8311). That case has been tried and resulted in a jury verdict in favor of plaintiff Butts for general damages in the sum of $60,000, and punitive damages in the sum of $3,000,000. On January 13, 1964 the District Judge granted a motion for a new trial in that case unless plaintiff agreed to remit all punitive damages awarded by the jury above the sum of $400,000.

** That this is a prime factor to be considered in applications made under Section 1404(a) is well recognized. *Wilson* v. *Great Atlantic & Pacific Tea Company*, 156 F. Supp. 767, 769-70; *Seaboard Surety Co.* v. *Texas City Refining*, 109 F. Supp. 468, 471; *Kirk* v. *Spur Distributing Co.*, 95 F. Supp. 428, 429; *Canuel* v. *Oskoian*, 23 F.R.D. 307, 314.

The application for rehearing was heard by the Court on November 26, 1963 and denied on the same date. In the order denying the application for rehearing, the Court declined to make a certification permitting an interlocutory appeal pursuant to 28 U.S.C. § 1292(b), although requested so to do. Accordingly, a petition for a writ of mandamus (Appendix A) was filed in the Court of Appeals for the Fifth Circuit on December 31, 1963 to compel the District Judge to vacate his orders. On January 13, 1964 the petition was denied without opinion.

At the hearing before the District Court and in support of its position that it could not reasonably hope to obtain a trial before an impartial jury, petitioner demonstrated that there existed in Alabama a widespread feeling of favoritism for plaintiff arising from his personal popularity as football coach of the University of Alabama, and the loyalty of the residents of Alabama to him, the University and its football team. At the same time, petitioner also demonstrated that there existed against it an intense feeling of hatred, bias and prejudice, arising in part by reason of articles which it had published, which were critical of conditions in Alabama and Alabama citizens in matters respecting civil rights and race relations, one of which was entitled "Birmingham, Alabama, City in Fear", and which appeared in the March 2, 1963 issue of The Saturday Evening Post.

The evidence adduced by petitioner at the hearing before the District Judge* clearly demonstrated that these prejudices in favor of plaintiff and against petitioner were so widespread and had become so firmly imbedded in the populace of Alabama as to be ineradicable. The evidence included:

> (a) More than 1,000 items, hostile to petitioner and favorable to plaintiff, appearing in approximately thirty newspapers published and circulated throughout Alabama over a period of eleven consecutive months.
>
> (b) Twenty affidavits, the majority from practicing attorneys, demonstrating the impossibility of petitioner having an impartial jury consider these cases.
>
> (c) Public statements evidencing bias or prejudgment of the issues of these cases by the Gov-

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* A summary of the evidence adduced was annexed as Exhibit K to the Petition for Mandamus. It is printed in Appendix A hereto, *infra, pp.* 41a-104a.

ernor, former Governor, United States Senator, Congressmen, members of the state legislature, the Alabama Attorney General, the President of the University of Alabama, the Trustees of the University of Alabama, Alumni Associations, Chambers of Commerce, the President of the Alabama State Bar Association, Mayors, City Councilmen, Circuit Solicitors, newspaper editors, bank presidents, executives, as well as hundreds of private individuals.

(d) Testimony of an Assistant United States Attorney for the Northern District of Alabama that feeling was so strong against petitioner that the United States Attorney had been requested to investigate the possibility of prosecuting petitioner for the violation of Federal law, although no violation had occurred. The documentary evidence showed that the United States Attorney in communications between himself and residents of Alabama, had characterized petitioner's publication regarding plaintiff, in the action in which $10,000,000 damages was sought, as false.

(e) Over five hundred unsolicited letters to petitioner and to plaintiff or various individuals and departments of the University of Alabama showing bias of an extreme and deepseated nature as well as a prejudgment of the liability of petitioner to plaintiff in these cases.

Plaintiff's evidence in opposition consisted principally of affidavits of attorneys stating as a conclusion that the District Court would do all in its power to provide petitioner with a fair and impartial trial and that their experience indicated that litigants in civil cases generally received fair trials in Alabama. These did not, nor could they, meet the issue, for it was and is petitioner's contention that the widespread and deepseated prejudice and passion that was demonstrated to exist could not possibly be overcome under any circumstances.

Notwithstanding the foregoing and the lack of any demonstration by plaintiff that it would suffer any inconvenience if the actions were transferred*, the District Judge denied the motions. In so doing, the Court concluded that there

> "has not been established such a strong case of adverse publicity that *any* jury selected from this district must be held to be presumptively biased for the plaintiff and against the defendant."

The Court in its opinion also noted that it had

> "weighed the relative advantages and obstacles to a fair trial and the factors of public interest and is not convinced that the balance is so strongly in favor of the defendant as to justify the overruling of plaintiff's choice of forum. *Gulf Oil Corp.*, supra."

## Reasons for Granting the Writ

The District Court applied erroneous criteria in determining whether the interests of justice required a transfer. This will deprive petitioner of its constitutional right to a trail of the issues before a fair and impartial jury (U. S. CONST. amends. V and VII). Certiorari ought be granted to ensure petitioner this important constitutional right and to resolve conflicts with other decisions as to the criteria to be applied in determining when a cause ought be transferred when bias and prejudice is claimed. Since the trial of one of the actions is presently scheduled for February 10, 1964, petitioner will apply for a stay thereof pending the final disposition of this petition.

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* A statement filed by plaintiff's counsel showed that of the witnesses likely to be called at the trial (which has been set for February 10, 1964) twenty resided in Georgia and five in Alabama; and that the latter were individuals closely connected with plaintiff, who would be willing to travel at his request to any place at which the trial might be held.

It is petitioner's contention that it was not required to demonstrate, as the District Court held, that *no* jury could possibly be selected in Alabama which would give it a fair trail. It was sufficient to establish, as petitioner did, the existence of bias and prejudice against it and in favor of plaintiff in Alabama, which would be likely to impair its chances of trail before a fair and impartial jury.

Thus, in *Delaney* v. *U. S.*, 1st Cir., 199 F. 2d 107, the Court said (p. 114):

> "* * * it seems to us neither right, nor in harmony with the spirit of the Sixth Amendment, for the United States to make him stand trail while the damaging effect of all that hostile publicity *may reasonably be thought* not to have been erased from the public mind." (Emphasis Added).

And in *United States* v. *Hoffa*, 205 F. Supp. 710, the Court said (pp. 722-3):

> "The evidence presented in support of this motion reveals that there is presently pending in Orlando a civil action between Local 299 of the Teamsters and the Florida National Bank of Orlando; that the transactions described in this indictment involve said bank to a very material degree; and that certain officers of said bank who very actively participated in the financial transactions involved in this indictment, are very prominent citizens of said city.
>
> "It is the opinion of the Court that these facts *create a local interest in this matter which is greater than that which might be present in another locality and they naturally tend to create an atmosphere which might present some difficulty in selecting an impartial and unbiased petit jury.* In order to obviate this possible difficulty and to assure that the defendants are tried in a locality which is free from prejudice, the Court will grant this motion and transfer the case for the purpose of trial * * *." (Emphasis Added).

Accord:

> *U. S.* v. *Reece*, 280 Fed. 913; *U. S.* v. *Rossiter*, 25 F.R.D. 258; *U. S.* v. *Florio*, 13 F.R.D. 296, 298.*

It is also contended that in the circumstances here presented it was error for the District Court to accord a strong presumption in favor of plaintiff's choice of forum in determining the propriety of a transfer. In so holding the District Court relied on *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, where this Court held that in applying the doctrine of *forum non conveniens*, plaintiff's choice of forum should rarely be disturbed unless the balance was strongly in favor of defendant (330 U. S. at p. 508). The *Gulf Oil* case was decided prior to the enactment of 28 U.S.C. §1404(a). In *Norwood* v. *Kirkpatrick*, 349 U. S. 29 this Court stated that the enactment of Section 1404(a) with its provisions for transfer was much more than a codification of the *forum non conveniens* doctrine the application of which always resulted in the dismissal of an action; and that the provisions of Section 1404(a) were "intended to permit courts to grant transfers upon a lesser showing of inconvenience" (349 U. S. at p. 32).

While this Court in the *Norwood* case, *supra*, made it clear that on a motion to transfer under Section 1404(a) a plaintiff's choice of forum was still one of the factors to be considered, it is equally clear under the rationale of that decision that the evidence necessary to justify a transfer was no longer required to be "strongly" in favor of a defendant.* We submit therefor that the District Court erred in imposing such a burden on petitioner.

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* While the cases quoted above involve the Sixth Amendment and the right to a fair jury trial in criminal cases, they are applicable here. In the case scheduled for trial on February 10, 1964 plaintiff is seeking $10,000,000 in damages—principally, if not wholly, punitive in nature. The fact that these damages are sought in a case denominated "civil" is not dispositive of the constitutional issue. As Chief Justice Warren said in *Trop* v. *Dulles*, 356 U. S. 86, 96

> "In deciding whether or not a law is penal, this Court has generally based its determination upon the purpose of the statute. If the statute imposes a disability for the purposes of punishment—that is, to reprimand the wrongdoer, to deter others, etc.—it has been considered penal."

This is especially so in the instant case where the prejudices and passions of a whole populace is concerned to a truly unprecedented extent.** In such a situation a plaintiff's choice forum can never, we respectfully submit, outbalance the "interest of justice" (28 U.S.C. § 1404(a)).***

The evidence adduced before the District Court demonstrated beyond peradventure that there had been a steady barrage of publicity of unprecedented scope which has permeated Alabama****; the nature of which was vehemently hostile and adverse to petitioner, highly favorable to plaintiff and uniformly reflective of a fixed opinion as to the falsity of petitioner's charges relating to plaintiff.

The evidence, including an examination of over five hundred letters embraced therein, also showed that Alabama's citizens feel an intense State loyalty in favor of plaintiff and an intense sectional hatred against petitioner.* Many of them have said they regard the impending trial of his action as an opportunity for a jury to return a verdict against petitioner in a sum so large as to destroy it economically; others have said that they hope that the plaintiff will, through the verdict, acquire financial ownership of petitioner. Some of the letters addressed to petitioner by former subscribers are so sacreligious as to compare plaintiff with the Saviour. Newspaper exhibits also demonstrated that legislative and executive comments prejudicial to defendant under the pretext of official inquiry into the issues, have been given wide publicity and have unquestionably resulted in creating additional prejudice and bias.**

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* In *Paragon-Revolute Corp.* v. *C. F. Pease Co.*, 120 F. Supp. 488, the Court said (p. 490):

> "I believe defendant is not bound to produce such a strong, favorable balance that his favoring factors must greatly preponderate those of plaintiff and further that disturbing plaintiff's choice of forum is no longer a rarity because of §1404(a)—defendant's mandatory margin for victory, then, need not be an overwhelming one."

** Stickers were even displayed on automobile bumpers reading "Bear Yes—Post No." "Bear" is the name by which plaintiff is known in Alabama.

*** In *Seaboard Surety Co.* v. *Texas City Refining*, 109 F. Supp. 468, the Court said (p. 471):

> "* * * it can never be in the interest of justice to require a trial in a forum in which an impartial trial may not be had."

**** An issue of the Mobile Press Register said that the publicity threatened "to beat the record set by World War II for consecutive days of appearing on page 1."

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* In *Crowell-Collier Pub. Co.* v. *Caldwell*, 5 Cir. 170 F. 2d 941, the Court in commenting on the contention that the case (p. 943) "was tried as a sectional conflict, a case of North against South" said (p. 945):

> "On another trial, the greatest care should be taken to try this case not as a public gladiatorial exposition but an ordinary trial for libel. In order to insure this, a change of venue, if requested, should be granted."

** The Attorney General of Alabama has described the charges made against plaintiff in petitioner's publications as "*a political kettle of fish*", and "*ridiculous*". The U. S. Attorney for the Northern District of Alabama has described them as "*A hoax*". Investigating legislators of Alabama have publicly stated that they were unsupported by any "*creditable evidence*". In its official report a special investigating committee of the Alabama Legislature publicly stated (we) "*have examined every material witness of whom we now have knowledge and who has been available to us.* Based upon the information we now have, the committee has concluded that *the evidence* does not support charges made in the Post article, 'The Story of a College Football Fix'." The Board of Trustees of the University of Alabama passed a resolution stating, in part, The Board "*feels assured that subsequent actions and investigations will vindicate his (Bryant's) personal integrity and his loyalty to the University of Alabama and the people of our state * * **". The Board's resolution condemned what it termed "*scurrilous*" attacks on Alabama by "*irresponsible sources and publications.*" The Governor of Alabama has publicly condemned The Saturday Evening Post.

Although plaintiff has suffered no financial damage as a result of or since petitioner's publications the jury in the action scheduled for trial on February 10, 1964 will be concerned with the contention that plaintiff is entitled to punitive damages in the sum of $10,000,000. A Court charged with the responsibility for the fair administration of justice should not require the trial of this action, which is concerned preponderantly, if not exclusively, with a claim for punitive damages in Alabama. To do so would permit the jury to express that community feeling of sectional hatred in a verdict for punitive damages calculated to destroy petitioner economically.

The District Judge erred in denying the motion, no doubt believing that he could by instruction and charge control that prejudice.* Only by this interpretation can one understand his ruling that the motion placed the burden on petitioner to show that *no* impartial jury could possibly be found. The very concept of punitive damages with its vague jury criteria can so easily become the opportunity for implementing community bias, that no judge is safe in the assumption that he can obliterate or even control the impact of such a force in this case.**

The character of the substantive law of this suit is an incitement to the expression of this bias, and it is least controllable because it is expressed in the unity of group action through which a jury functions. This is not a situation in which it is feared that a jury may exercise prejudice in favor of plaintiff and against petitioners. On the contrary, it is a situation in which it is difficult to anticipate that any Alabama jury would be able to function in resistance to this community attitude. We must recognize that a jury in Alabama must live forever with the attitudes of its community which has prejudged these cases. It cannot affront this community attitude. The substantive law of libel gives a jury an opportunity to pretend fairness and at the same time punish petitioner whatever the merits of the action.

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* In *Krulewitch v. U. S.*, 336 U. S. 440, the late Mr. Justice Jackson in his concurring opinion said (p. 453):

> "The naive assumption that prejudicial effects can be overcome by instructions to the jury * * * all practicing lawyers know to be unmitigated fiction."

** In *Irvin v. Dowd*, 366 U. S. 717, Mr. Justice Frankfurter in his concurring opinion said (pp. 729-30):

> "How can fallible men and women reach a disinterested verdict based exclusively on what they heard in court when, before they entered the jury box, their minds were saturated by press and radio for months preceding by matter designed to establish the guilt of the accused."

The point cannot be overstated, or perhaps adequately stated, that the jury need give only the pretense of obedience to the judge's instructions, but must give substantive obedience to the attitude of the community from which it is drawn. Such a jury cannot give petitioner a fair trial.

In *United States* v. *Hoffa* (Cr. 13,383), a decision was made by District Judge Wilson on December 29, 1963 transferring the trial of the case from the Middle District of Tennessee to the Eastern District thereof. The opinion of the Court is printed in Appendix C hereto, *infra* pp. 1c-5c. The Court noted that "the publicity" with respect to the case "has been quite intense", that an "impartial review * * * can only lead to the conclusion that it has been prejudicial to each of the defendants herein," that a jury panel could not be drawn in the District "without a large percentage of them having been recently exposed to intensive publicity reasonably expected to influence them in their attitudes toward these defendants," that defendants were entitled to be judged "solely on the basis of evidence produced in Court under the safeguards of a fair procedure", and that the Court would assure them of those rights "by securing a jury removed from or uninfluenced by the publicity accorded the case."

We respectfully submit that the procedure followed by the District Judge in the *Hoffa* case, should have been followed here. On this record these cases should be transferred. No harm will befall plaintiff if that occurs. No reason is advanced for ruling that these cases should be tried in the Court least able to convene an impartial jury.

## CONCLUSION

**For the foregoing reasons, this petition for a writ of certiorari should be granted.**

Respectfully submitted,

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# APPENDIX A

## Petition for the Writ of Mandamus

IN THE

# United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 21152

THE CURTIS PUBLISHING COMPANY, a Corporation,
*Petitioner,*

*v.*

HONORABLE H. H. GROOMS, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA,
*Respondent.*

Comes now The Curtis Publishing Company, a corporation, and pursuant to Rule 13a of the Rules of this Court petitions for a writ of mandamus directed to the Honorable H. H. Grooms, United States District Judge for the Northern District of Alabama, and in support thereof respectfully shows unto the Court the following:

1. Petitioner is defendant in two civil actions for libel pending in the United States District Court for the Northern District of Alabama, Southern Division, wherein the plaintiff is one Paul Bryant, and which said actions are numbered 63-2W and 63-166 in that Court. In 63-2W plaintiff claims $500,000.00, and in 63-166 plaintiff claims

$10,000,000.00. These are based upon publications appearing in petitioner's magazine, The Saturday Evening Post. One of said publications entitled "The Story of a College Football Fix" charged that plaintiff as coach of the University of Alabama football team had been given plays, formations and other information of the University of Georgia Football team by its Athletic Director prior to a football game between those two teams. Defendant filed an answer asserting the truth of this charge in 63-166 and a motion to dismiss in 63-2W. Attached hereto as Exhibits A, B, C and D respectively are copies of the complaints, answer and motion in each of these actions.

2. The case based upon the publication of "The Story of a College Football Fix" has been set down for trial for February 10, 1964 at the United States Courthouse in the City of Birmingham, Alabama.

3. There presently exists among the residents of the Northern District of Alabama an intense and widespread feeling of favoritism to plaintiff and of hatred, bias and prejudice against defendant. Said feeling arises in part from plaintiff's personal popularity as football coach of the University of Alabama and the loyalty of the residents of Alabama to the plaintiff, the University and its football team. In addition a general antagonism exists against defendant by reason of articles defendant has published critical of conditions in Alabama and of Alabama citizens in matters respecting civil rights and race relations, one of which was entitled "Birmingham, Alabama, A City In Fear", and which appeared in the March 2, 1963 issue of The Saturday Evening Post. Plaintiff is regarded as a local hero in instituting and prosecuting this action against defendant. The hostility of the community against defendant has been intensified by

widespread publicity concerning these cases throughout Alabama over a period of eleven months, all of which was favorable to the plaintiff and hostile to the defendant. These cases have been tried in the press, and it has returned its verdict in favor of plaintiff. Public feeling against defendant became so strong that various governmental bodies entered into the matters in controversy and expressed views adverse to the defendant. By reason of the foregoing bias and prejudice it is improbable that defendant will receive a trial before a fair and impartial jury if said cases are tried in the Northern District of Alabama in Birmingham as presently scheduled. These cases have been publicly prejudged adversely to defendant.

4. (a) On August 12, 1963, petitioner herein filed identical motions in each of these cases, under 28 U.S.C. 1404(a), seeking a transfer of these cases to a forum outside the State of Alabama for trial on the grounds *inter alia* that defendant would not receive a fair trial in the State of Alabama. A copy of one of said motions is attached hereto as Exhibit E. These motions came on to heard before Honorable H. H. Grooms, United States District Judge, respondent in this petition, and were consolidated for hearing as per his order of the 11th day of September, 1963, attached hereto as Exhibit F.

(b) On the 31st day of October, 1963, Judge Grooms denied said motions as per the order of the Court of that date, attached hereto as Exhibit G.

(c) Thereafter, on the 1st day of November, 1963, the attorneys for plaintiff, Bryant, in the civil actions above described, together with the Jackson, Mississippi law firm of Barnett, Montgomery, McClintock and Cunningham, filed still another libel action against defendant in the

United States District Court for the Northern District of Alabama, Southern Division, entitled Col. T. B. Birdsong, etc. vs. The Curtis Publishing Company, a corporation. Attached hereto as Exhibit H is a copy of the complaint in that action.

(d) Following this, on the 7th day of November, 1963, petitioner herein filed an application for rehearing of its motions for change of venue, based in part upon the filing of the Birdsong action. A copy of said motion for rehearing is attached hereto as Exhibit I.

(e) On the 26th day of November, 1963, said application for rehearing came on to be heard and was argued before Honorable H. H. Grooms, who, on the same date, entered an order denying same and refusing to certify his orders denying transfer for interlocutory appeal pursuant to the provisions of Section 1292(b) of Title 28, U.S.C.A. Attached hereto as Exhibit J is a copy of said order.

5. There was included among the evidence offered in support of the motion and in demonstration of the bias and prejudice as aforesaid the following:

(a) More than 1,000 items appearing in approximately thirty newspapers published and circulated throughout Alabama over a period of eleven months hostile to defendant and favorable to plaintiff.

(b) Twenty affidavits, the majority from practicing attorneys, showing the impossibility of defendant having an impartial jury consider these cases.

(c) Over five hundred letters to defendant and to plaintiff or various individuals and departments of the University of Alabama showing bias of an extreme and deep-seated nature as well as a prejudgment of the liability of defendant to plaintiff in these cases.

(d) Testimony of an Assistant United States Attorney for the Northern District of Alabama that feeling was so strong against defendant that the United States Attorney had been requested to investigate the possibility of prosecuting defendant for violation of Federal law although defendant had not violated any Federal law. The documentary evidence showed that the United States Attorney has characterized the contents of defendant's publication regarding plaintiff as false in communications between the United States Attorney and Alabama residents.

(e) Public statements evidencing bias or prejudgment of the issues of these cases by the Governor, former Governor, United States Senator, Congressmen, members of the state legislature, the Alabama Attorney General, the President of the University of Alabama, the Trustees of the University of Alabama, Alumni Associations, Chambers of Commerce, the President of the Alabama State Bar Association, Mayors, City Council, Circuit Solicitors, newspaper editors, bank presidents, executives as well as hundreds of private individuals.

A more complete summary of said evidence is attached hereto as Exhibit K.

### Issue Presented

6. Notwithstanding the above showing, the District Court denied the motion for a transfer. Its decision was based on its application of the following incorrect rules of law:

(a) That there is a strong presumption in favor of the Northern District of Alabama as the place of trial because said District is the forum chosen by the plaintiff.

(b) That in order to overcome the aforesaid strong presumption, defendant must show that *no* jury could be selected in the Northern District of Alabama which would give the defendant a fair trial.

7. The foregoing rulings constituted a misconstruction and a misapplication of the law, and clear legal error, for the following reasons:

(a) Under 28 U.S.C. Sec. 1404(a) and the controlling court decisions thereunder, the use of a strong presumption in favor of the plaintiff's choice of a forum is not proper; even in cases in which defendant's objection is based solely on matters of convenience.

(b) Where, as here, the defendant's objection to the forum of plaintiff's choice was based upon bias and prejudice against the defendant existing in said forum, the use of such a presumption in favor of plaintiff's choice of forum was manifestly improper.

(c) By demonstrating the existence of bias and prejudice against the defendant in the Northern District of Alabama to such a degree as established the probability of bias and prejudice at defendant's trial, defendant was entitled as a matter of law to have its case transferred to a District where such conditions would not exist. The District Court's failure to so transfer was an abuse of discretion.

(d) By requiring defendant to demonstrate that *no* jury could possibly be selected in the Northern District of Alabama which would give defendant a fair trial, the Court subjected the defendant to an unreasonable and improper burden and imposed an erroneous standard with which no defendant could possibly comply.

8. The extraordinary writ of mandamus should issue for the following reasons:

(a) The bias and prejudice against defendant in the State of Alabama is so widespread and intense that a failure to transfer these cases for trial would cause a denial of justice at the forthcoming trial.

(b) The District Court misconstrued and misapplied the law as hereinabove stated and thereby deprived defendant of its right to a fair trial.

(c) To delay ruling upon the error of the District Court will result in the holding of a long and expensive trial which may have to be set aside by reason of error, bias and prejudice which could and should be avoided now.

(d) By refusing to certify its orders as appealable interlocutory orders under Sec. 1292(b) of Title 28 U.S.C., the District Court left petitioner with no other remedy than to make this application for writ of mandamus.

9. Plaintiff has suffered no financial damage as a result of or since the defendant's publications, but the jury will be concerned with the contention that plaintiff is entitled to punitive damages in the sum of $10,000,000. The evidence, including an examination of over five hundred letters embraced therein, showed that Alabama's citizens feel an intense State loyalty in favor of plaintiff, and an intense sectional hatred against the defendant. Many of them have said they regard the impending trial of this action as an opportunity for a jury to return a verdict against the defendant in a sum so large as to destroy the defendant economically; others have said that they hope that the plaintiff will, through the verdict, acquire financial ownership of the defendant. Some of the letters addressed to defendant by former subscribers are so sacreligious as to compare the plaintiff with the Saviour. A Court charged with the responsibility for the

fair administration of justice should not require the trial of an action preponderantly, if not exclusively concerned with a claim for punitive damages in this District. To do so would permit the jury to express that community feeling of sectional hatred in a verdict for punitive damages calculated to destroy the defendant economically. The District Judge erred in denying the motion, no doubt believing that he could by instruction and charge control that prejudice.

Only by this interpretation can one understand his ruling that the motion placed the burden on defendant to show that *no* impartial jury could possibly be found. The very concept of punitive damages with its vague jury criteria can so easily become the opportunity for implementing community bias, that no judge is safe in the assumption that he can obliterate or even control the impact of such a force in this case. The character of the substantive law of this suit is an incitement to the expression of this bias, and it is least controllable because it is expressed in the unity of the group action through which a jury functions. This is not a situation in which it is feared a petit jury may exercise prejudice in favor of plaintiff and against defendant. On the contrary, it is a situation in which it is difficult to anticipate that any Alabama jury would be able to function in resistance to this community attitude. We must recognize that a jury in Alabama must live forever with the attitudes of its community which has prejudged these cases. It cannot affront this community attitude. The substantive law of libel gives a jury an opportunity to pretend fairness and at the same time punish the defendant whatever the merits of the action.

The point cannot be overstated, or perhaps adequately stated, that the jury need give only the pretense of obedience to the judge's instructions, but must give substantive obedience to the attitude of the community from which it is drawn. Such a jury cannot give defendant a fair trial.

On this record these cases should be removed.

No harm will befall the plaintiff if these cases are removed.

No reason is advanced for ruling that these cases should be tried in the court least able to convene an impartial jury.

Wherefore petitioner, the aid of this Honorable Court respectfully requesting, prays

(1) That all proceedings in each of these cases, 63-2W and 63-166, and a trial of the latter of such cases set for February 10, 1964 be stayed pending the granting of writ of mandamus by this Honorable Court and the transfer of these cases by the District Court.

(2) That this Honorable Court will issue an alternative writ of mandamus or rule nisi directed to respondent, Honorable H. H. Grooms, requiring him to show cause why the orders denying petitioner's motion for change of venue and application for rehearing or reconsideration of same of the 31st day of October, 1963, and the 26th day of November, 1963, should not be held for naught and vacated and the propriety or correctness of said orders be heard before this Honorable Court at a time and place to be fixed by it.

(3) That after a hearing a writ of mandamus or other appropriate writ be issued out of this Honorable Court directing and commanding Honorable H. H. Grooms, United States District Judge for the Northern District of Alabama, to vacate the orders of the 31st day of Octo-

ber, 1963 and the 26th day of November, 1963, denying petitioner's motions for change of venue and to enter an order transferring such actions to a forum outside the State of Alabama for trial.

(4) That the Court grant the petitioner such other and further relief as may be just in the premises.

Respectfully submitted,

Pepper, Hamilton & Scheetz,
Gallop, Climenko & Gould,
Beddow, Embry & Beddow

By T. Eric Embry
Attorneys for Petitioner

State of Alabama }
Jefferson County }

Personally appeared before me, the undersigned Notary Public, T. Eric Embry, who, after first by me being duly sworn, deposes and says that he is an attorney of record for The Curtis Publishing Company, a corporation, in these causes and as such has authority of such corporation to make this affidavit and that the allegations of fact contained in the foregoing petition for the writ of mandamus are true and correct and those conclusions of law and of fact contained therein he verily believes to be true.

This the 30th day of December, 1963.

Roderick M. MacLeod, Jr.
Notary Public

## Exhibit A to Petition for Mandamus

IN THE

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

Civil Action No. CA 63-166

PAUL BRYANT,
*Plaintiff,*
*v.*
THE CURTIS PUBLISHING COMPANY, a Corporation,
*Defendant.*

### COMPLAINT

1. Jurisdiction of this court in this case is founded on diversity of citizenship and amount. Plaintiff is a resident citizen of the State of Alabama and of the Northern District of Alabama. Defendant, The Curtis Publishing Company, is a corporation organized and existing under the laws of Pennsylvania, with its principal place of business in the City of Philadelphia, Pennsylvania, where it publishes and distributes in this district The Saturday Evening Post, a magazine of national circulation.

2. Plaintiff claims of the defendant the sum of Five Million ($5,000,000.00) Dollars as damages for falsely and maliciously publishing or causing to be published in the magazine, The Saturday Evening Post, on or about March 23, 1963, with intent to defame the plaintiff, an article entitled, "The Story of a College Football Fix," a true and correct copy of which article is attached, marked Exhibit "A", and incorporated in and made part hereof by reference.

3. Plaintiff avers that more than ten (10) days before the commencement of this action, plaintiff made written demand upon the defendant for a public retraction of the charge or matter published in said article, and that the defendant failed or refused to publish a full and fair retraction of the aforesaid charge or matter in as prominent and public place or manner as that occupied by the matter contained in said article.

4. Plaintiff avers that said libelous article of March 23, 1963, caused plaintiff, who was and is a football coach and athletic director of national reputation and highest standing in his profession, extreme mortification and embarrassment, damaged his reputation, and injured plaintiff in his profession, trade or business, as aforesaid, in the following particulars:

(a) Plaintiff is falsely and maliciously charged in the title and subtitle of the article with being a "rigger" and "fixer" of a college football game.

(b) Plaintiff is falsely and maliciously charged with being a participant in the most shocking sports scandal since that of the Chicago White Sox in throwing the 1919 World Series.

(c) Plaintiff's integrity is falsely and maliciously portrayed as being worse than that of disreputable gamblers in the scandals afflicting college basketball.

(d) Plaintiff is falsely and maliciously charged with corruptly selling out and betraying his football players while being employed to educate and guide them.

(e) Defendant, maliciously and with intent to defame, states through its editors, "The corrupt here were not professional ballplayers gone wrong, as in the 1919 Black Sox scandal. The corrupt were not disreputable gamblers, as in the scandals continually afflicting college basketball.

The corrupt were two men—Butts and Bryant—employed to educate and to guide young men."

(f) Defendant, maliciously and with intent to defame, states through its editors, "How prevalent is the fixing of college football games? How often do teachers sell out their pupils? We don't know—yet. For now we can only be appalled."

(g) Defendant, maliciously and with intent to defame, states in said article:

> "The chances are that Wally Butts will never help any football team again. Bear Bryant may well follow him into oblivion—a special hell for that grim extrovert—for in a very real sense he betrayed the boys he was pledged to lead. * * * But careers will be ruined, that is sure. A great sport will be permanently damaged. For many people the bloom must pass forever from college football."

WHEREFORE, plaintiff brings this action and demands judgment against the defendant, as actual and punitive damages, in the sum of Five Million ($5,000,000.00) Dollars and costs.

WILLIAM S. PRITCHARD
William S. Pritchard

WINSTON B. McCALL
Winston B. McCall
831 Frank Nelson Building
Birmingham, Alabama
Attorneys for Plaintiff

PRITCHARD, McCALL & JONES
Of Counsel

DEMAND FOR JURY

Plaintiff demands a trial by jury.

WINSTON B. McCALL
Winston B. McCall
Of Counsel for Plaintiff

## Exhibit B to Petition for Mandamus

IN THE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA

WESTERN DIVISION

Civil Action No. CA 63-2-W

PAUL BRYANT,
*Plaintiff,*

*v.*

CURTIS PUBLISHING COMPANY, a Corporation, and
FURMAN BISHER,
*Defendants.*

### COMPLAINT

1. Jurisdiction of this Court in this cause is founded on diversity of citizenship and amount. Plaintiff is a resident citizen of the State of Alabama and of the Northern District of Alabama. Defendant, The Curtis Publishing Company, is a corporation organized and existing under the laws of Pennsylvania, with its principal place of business in the City of Philadelphia, Pennsylvania, where it publishes, among other magazines, The Saturday Evening Post. Defendant, Furman Bisher, is a citizen of the State of Georgia residing in the City of Atlanta, Georgia. The matter in controversy exceeds, exclusive of interest and cost, the sum of Ten Thousand ($10,000.00) Dollars.

2. Plaintiff claims of the defendants the sum of Five Hundred Thousand ($500,000.00) Dollars as damages for falsely and maliciously publishing or causing to be published in the magazine, The Saturday Evening Post, on or about October 20, 1962, with intent to defame the plaintiff, an article entitled "College Football Is Going Beserk", a true and correct copy of which article is attached hereto marked Exhibit "A" and incorporated herein by reference.

3. Plaintiff avers that more than sixty (60) days before the commencement of this action plaintiff made written demand upon the defendants for a public retraction of the charge or matter published in said article, and that the defendants, and each of them, failed or refused to publish a full and fair retraction of the aforesaid charge or matter in as prominent and public place or manner as that occupied by the matter contained in said article.

4. Plaintiff avers that the said libelous article of October 20, 1962, caused plaintiff to be embarrassed, damaged his reputation and injured and damaged the plaintiff in his profession, trade or business in that it falsely charged, falsely inferred, or falsely insinuated the following separate and several matters with respect to plaintiff as an individual and as a college football coach and football coaches' instructor, which is his business or occupation, viz:

(a) That he encouraged or tolerated players on the football team or teams which he coached to commit acts of brutality on the football playing field.

(b) That he encouraged and conditioned his football players to play the kind of excessively rough football in which an increasing number of players will inevitably be injured—some of them fatally.

(c) That on the practice field his favorite injunction seems to be "Knock his damned head off."

(d) That he has left a trail of discarded athletes that wouldn't meet his 120% demand for conditioning, calling them "Rifraff."

(e) That he stated, referring to Darwin Holt, "He's so tough we don't let him scrimmage during the week, he's liable to hurt somebody".

WHEREFORE, plaintiff brings this action and demands judgment against the defendants, as actual and punitive damages, in the sum of Five Hundred Thousand ($500,000.00) Dollars and costs.

WILLIAM S. PRITCHARD
William S. Pritchard

WINSTON B. MCCALL
Winston B. McCall
831 Frank Nelson Building
Birmingham, Alabama
Attorneys for Plaintiff

PRITCHARD, MCCALL & JONES
Of Counsel

### DEMAND FOR JURY

Plaintiff demands a trial by jury.

WINSTON B. MCCALL
Winston B. McCall
Of Counsel for Plaintiff

## Exhibit C to Petition for Mandamus

IN THE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

Civil Action No. 63-166

PAUL BRYANT,

*Plaintiff,*

*v.*

THE CURTIS PUBLISHING COMPANY, a Corporation,

*Defendant.*

## ANSWER OF DEFENDANT

### FIRST DEFENSE

1. The complaint fails to state a claim upon which relief can be granted.

### SECOND DEFENSE

1. Defendant admits the averments of Paragraph 1 of the complaint.

2. Defendant admits that it published in its magazine, The Saturday Evening Post, under date of March 23, 1963, the article entitled "The Story of a College Football Fix", and that Exhibit "A" attached to the complaint is a true and correct copy of said article. Defendant also

admits that plaintiff claims damages as a result of such publication. Defendant denies each and every other averment contained in Paragraph 2 of the complaint.

3. Defendant admits the averments of Paragraph 3 of the complaint.

4. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of the effect, on plaintiff or his reputation, of the publication of said article, or of the portions thereof referred to in sub-paragraphs (a) through (g) of Paragraph 4 of the complaint. Defendant denies that said article, or any portion thereof, was published falsely and maliciously.

## COUNT II

1. Defendant hereby adopts and incorporates by reference each of its answers to paragraphs 1 through 4 of plaintiff's original complaint.

2. Defendant admits that it published in its issue of The Saturday Evening Post dated April 27, 1963 the editorial attached to plaintiff's "Amendment to Complaint", as Exhibit "A", and that such publication was subsequent to the date when plaintiff advised defendant that he claimed that the original article was false and requested a retraction and subsequent to the report of the Investigating Committee of the Alabama Legislature. Defendant denies each and every other averment contained in Paragraph 2 of Count II.

## THIRD DEFENSE

Defendant avers that the charge against plaintiff contained in the article complained of is that plaintiff is a fixer and a rigger in that he participated in a conspiracy to fix and rig the Alabama-Georgia game of 1962, by accepting in advance of the game confidential information concerning the Georgia Football team calculated to affect the score of said game.

## FOURTH DEFENSE

Defendant avers that it published the article in the belief that the charge against plaintiff in the article was true, and in reliance on information in its possession justifying said belief.

PEPPER, HAMILTON & SCHEETZ
BEDDOW, EMBRY & BEDDOW

By T. ERIC EMBRY
Attorneys for Defendant

## Exhibit C to Petition for Mandamus

IN THE

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

Civil Action No. 63-166

PAUL BRYANT,
*Plaintiff,*
*v.*
THE CURTIS PUBLISHING COMPANY, a Corporation,
*Defendant.*

Comes the Defendant and in order to supply a typographical omission contained in its answer heretofore filed amends the Third Defense contained in said Answer so that the same reads as follows:

### THIRD DEFENSE

Defendant avers that the charge against plaintiff contained in the article complained of is that plaintiff is a fixer and a rigger in that he participated in a conspiracy to fix and rig the Alabama-Georgia game of 1962, by accepting in advance of the game confidential information concerning the Georgia Football team calculated to affect the score of said game, and defendant avers that said charge is true.

PEPPER, HAMILTON & SCHEETZ
GALLOP CLIMENKO & GOULD
BEDDOW, EMBRY & BEDDOW

By T. ERIC EMBRY
Attorneys for Defendant.

## Exhibit D to Petition for Mandamus

IN THE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA

WESTERN DIVISION

Civil Action No. 63-2-W

PAUL BRYANT,

*Plaintiff*,

*v.*

CURTIS PUBLISHING COMPANY, a Corporation, and
FURMAN BISHER,

*Defendants.*

### MOTION OF DEFENDANT, THE CURTIS PUBLISHING COMPANY, A Corporation, To DISMISS.

Comes the defendant, The Curtis Publishing Company, a Corporation, and moves the Court as follows:

1. To dismiss this action because the complaint fails to state a claim against this defendant upon which relief can be granted.

2. To dismiss the action inasmuch as the same is brought improperly in the Western Division of the Northern District of Alabama.

3. To dismiss this action because the complaint fails to state a claim against this defendant upon which relief can

be granted in the following particulars, separately and severally:

(a) For that the magazine article complained of is not libelous as a matter of law.

(b) The magazine article complained of is not libelous per se and there is no allegation of special damages.

(c) Part of the magazine article complained of and relied upon as libelous is not of and concerning the plaintiff.

(d) Part of the magazine article complained of and relied upon as libelous is alleged out of the context of the entire magazine article which is not libelous as a matter of law.

(e) To subject this defendant to liability in the circumstances complained of would impose an unreasonable burden upon interstate commerce in violation of Article 1, Section 8 of the Constitution of the United States.

(f) To subject this defendant to liability in the circumstances complained of would abridge the freedom of speech and of press in violation of the First Amendment to the Constitution of the United States, made applicable to the States by the Fourteenth Amendment to the Constitution of the United States.

(g) To subject this defendant to liability in the circumstances complained of would be repugnant to Article 1, Section 6 of the Constitution of the State of Alabama in denying to this defendant due process of law.

(h) To subject this defendant to liability in the circumstances complained of would be repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(i) The magazine article complained of is not libelous as a matter of law in that it is fair comment concerning a personality who is famous throughout the United States and abroad.

Pepper, Hamilton & Scheetz
Beddow, Embry & Beddow

By T. Eric Embry
T. Eric Embry, Attorneys for
The Curtis Publishing Company,
a Corporation

## Exhibit E to Petition for Mandamus

IN THE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

Civil Action No. 63-2-W

PAUL BRYANT,

*Plaintiff,*

*v.*

CURTIS PUBLISHING COMPANY, a Corporation, and
FURMAN BISHER,

*Defendants.*

### MOTION FOR CHANGE OF VENUE OF DEFENDANT THE CURTIS PUBLISHING COMPANY

Comes the defendant The Curtis Publishing Company and moves the court for a change of venue for the trial of this action, and assigns as grounds for this motion the following separately and severally:

1. It is in the interest of justice to transfer this action to some other District outside the State of Alabama where it might have been brought originally in that:

(a). This defendant cannot receive a fair trial before an impartial jury in this District nor in the State of Alabama.

There exists throughout the State of Alabama great prejudice against this defendant and its publication, The Saturday Evening Post, wherein the article complained of by plaintiff appeared. This defendant and the Saturday Evening Post have been the subject of frequent and widespread attack throughout Alabama. These attacks have been publicized and made by the press, radio, television and other media. Attacks have been publicized and made by high public officials in Alabama, members and Committees of the Legislature of Alabama, by civic and social organization, by prominent public figures and by various and sundry individuals in all walks of life. The prejudice against this defendant has been so generated and inflamed that a jury free of such prejudice can not be selected in this or any other District in Alabama.

(b). A fair trial for this defendant, The Curtis Publishing Company, is impossible to obtain in this District or anywhere in the State of Alabama in that the plaintiff in this cause is accorded the position of a public hero in the State of Alabama because as head coach of the football team at the University of Alabama he has brought that team from a losing position to one recognized as national champions in 1961. There are great numbers of alumni, fans and supporters of said University of Alabama and its football team residing in this District and throughout the State of Alabama. There exists such an extensive and widespread bias in favor of the plaintiff herein that a jury free of such bias in his favor could not be selected in this District or any other District in Alabama.

2. That for the convenience of the parties, and in the interest of justice, this court should transfer this action to any other District outside the State of Alabama where it might have been brought originally in that:

(a). The plaintiff resides in Alabama in this District whereas this defendant is incorporated in Pennsylvania, is not licensed to do business nor is doing business in this District or the State of Alabama. It would be impossible for this defendant to compel unwilling witnesses to attend this Court. A large number of such witnesses live outside the State of Alabama and more than 100 miles from the place of trial of this case.

(b) The expense and inconvenience to the plaintiff of transporting willing witnesses to a District outside Alabama is negligible as compared to the expense and inconvenience to this defendant of transporting willing witnesses to this Court from outside of Alabama.

(c) The source of proof of both plaintiff and defendant are outside of Alabama.

3. That for the convenience of the witnesses, in the interest of justice, this court should transfer this action to any other District outside the State of Alabama where it might have been brought originally in that:

(a) Most of the witnesses for both plaintiff and defendant reside outside the State of Alabama.

All of which grounds this defendant would show the Court by oral testimony, affidavits, depositions, and exhibits on a hearing of this motion.

Pepper, Hamilton & Scheetz
Beddow, Embry & Beddow
and T. Eric Embry
T. Eric Embry
Attorneys for Defendant, The Curtis Publishing Co.

## Exhibit F to Petition for Mandamus

IN THE

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

Civil Action No. 63-166 S

PAUL BRYANT,

*Plaintiff*

*vs.*

CURTIS PUBLISHING COMPANY, a corporation,

*Defendant*

WESTERN DIVISION

Civil Action No. 63-2

PAUL BRYANT,

*Plaintiff*

*vs.*

THE CURTIS PUBLISHING COMPANY, a corporation, and FURMAN BISHER,

*Defendants*

ORDER

The defendant, The Curtis Publishing Company, a corporation, has moved to consolidate the motions to change venue in the above-styled causes, and the plaintiff concurring therein:

It is Ordered, Adjudged and Decreed that these actions, in so far as they relate to the motions to change venue, be and they are hereby consolidated for hearing: and all evidence taken in one case shall be regarded as applicable to the other case.

Done and Ordered, this the 11th day of September, 1963.

H. H. GROOMS

District Judge

## Exhibit G to Petition for Mandamus

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 63-166 S

PAUL BRYANT,
*Plaintiff*
*vs.*
CURTIS PUBLISHING COMPANY, a corporation,
*Defendant*

Civil Action No. 63-2 W

PAUL BRYANT,
*Plaintiff*
*vs.*
THE CURTIS PUBLISHING COMPANY, a corporation,
and FURMAN BISHER,
*Defendants*

### ORDER ON MOTIONS TO CHANGE VENUE

The defendant Curtis Publishing Company, a corporation, has filed motions to change venue in each of these cases to a district without the State of Alabama. These motions are filed under Title 28, U.S.C.A., Subsection 1404(a), which provides as follows:

> "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

The Court has heard extended oral arguments and has read with care the briefs submitted by counsel. The Court has carefully considered the evidence and the many exhibits which have been admitted, the contents of which have been carefully summarized in the defendant's excellent "Summary of Evidence".

It need hardly be noted that Subsection 1404(a) vests a wide discretion in this Court. *Pilot Life Insurance Company* v. *Boone*, 5 Cir., 236 F. 2d 457. In *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, 508 and 509, 67 S. Ct. 839, the court listed certain factors that may be considered by the trial court, which may justify or require either the grant or the denial of the remedy in cases involving the convenience of parties and witnesses in civil actions. These and others have been referred to in later decisions but will not be restated here, since the Court is of the definite opinion that insofar as the convenience of parties and witnesses the defendant has not made out a case meriting the transfer of these actions.

Defendant's main reliance is grounded upon the premise that in the interest of justice the cases should be transferred asserting that defendant cannot obtain a fair and impartial trial before a jury in the Northern District of Alabama. It insists that "trial by newspaper" and by other news media has deprived it of even the prospects of obtaining a fair and impartial trial in this district, or in any of the three districts of this state. If such is the case, it would be the duty of this Court to transfer these cases to another district "where it [they] might have been brought". See *Irvin* v. *Dowd*, 366 U. S. 717, 81 S. Ct. 1639, where the *voire dire* examination of the jurors placed in the box reflected the presence of "a pattern of deep and bitter prejudice," throughout the community, following an extraordinary volume of sensational publicity adverse to the defendant, and where Justice Frankfurter, in a concurring opinion, saw fit to observe:

> "* * * such disregard of fundamental fairness is so flagrant that the Court is compelled * * * to reverse a conviction in which prejudicial newspaper intrusion has poisoned the outcome."

It is noted, however, that the Court stated:

> "It is not required, however, that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case."

Jurors in the Northern District of Alabama are selected from the entire district which is composed of 31 counties and in which reside more than 1,800,000 people. These jurors are selected from all walks of life.

There are 23,973 alumni of the University of Alabama in the district, but this is only one in 76 of the total population.

The Court is of the opinion that there has not been established such a strong case of adverse publicity that *any* jury selected from this district must be held to be presumptively biased for the plaintiff and against the defendant, rendering unlikely a trial by an impartial jury.

The Court has weighed the relative advantages and obstacles to a fair triai and the factors of public interest and is not convinced that the balance is so strongly in favor of the defendant as to justify the overruling of plaintiff's choice of forum. *Gulf Oil Corp.*, supra.

The Court is of the opinion that the motions to change venue are due to be overruled. *Beck* v. *Washington*, 369 U. S. 541.

It is, therefore, ORDERED, ADJUDGED and DECREED that the defendant's motions in each of these cases to change venue be and each of said motions is hereby overruled.

Done and Ordered, this the 31st day of October, 1963.

H. H. GROOMS
District Judge

## Exhibit H to Petition for Mandamus

IN THE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

Civil Action No.

Colonel T. B. Birdsong, who sues on behalf of himself and other men of the Mississippi Highway Patrol similarly situated,

*Plaintiffs*

*v.*

The Curtis Publishing Company, a Corporation,

*Defendant*

### Complaint

1. Jurisdiction of this court in this case is founded on diversity of citizenship and amount. Plaintiff brings this action on behalf of himself and other men of the Mississippi Highway Patrol similarly situated, as a class action, to enforce a several right involving a common question of law or fact, all of which plaintiffs are residents of the State of Mississippi. Defendant, Curtis Publishing Company, a corporation, organized and existing under the laws of Pennsylvania, with its principal place of business in the City of Philadelphia, Pennsylvania, does business in and distributes in this district The Saturday Evening Post, a magazine of national circulation.

2. Plaintiffs claim of the defendant the sum of One Million ($1,000,000.00) Dollars as damages for falsely and maliciously publishing or causing to be published in the magazine, The Saturday Evening Post, on or about November 10, 1962, with intent to defame plaintiffs, an article entitled, "What Next in Mississippi?", a true and correct copy of which article is attached, marked Exhibit "A", and incorporated in and made part hereof by reference.

3. Plaintiffs aver that more than thirty (30) days before the commencement of this action, plaintiffs made written demand upon the defendant for a public retraction of the charge or matter published in said article, and that the defendant failed or refused to publish a full and fair retraction of the aforesaid charge or matter in as prominent and public place or manner as that occupied by the matter contained in said article.

4. Plaintiffs aver that said libelous article of November 10, 1962, damaged plaintiffs' reputations and injured plaintiffs in their trade or occupation, in the following particulars:

(a) Plaintiffs are falsely and maliciously charged with official misconduct in their employment as members of the Mississippi Highway Patrol during the Oxford, Mississippi disturbance.

(b) Defendant maliciously, falsely and with intent to defame plaintiffs, refers to plaintiffs in said article, "those bastards" in an attempt to throw shame and disgrace upon plaintiffs.

(c) Defendant maliciously, falsely and with intent to defame plaintiffs, charges plaintiffs with a "sizable portion of the blame" for the Oxford, Mississippi disturbance in an attempt to hold plaintiffs up to public scorn, ridicule and contempt.

WHEREFORE, plaintiffs bring this action and demand judgment against the defendant as actual and punitive damages in the sum of One Million ($1,000,000.00) Dollars and costs.

BARNETT, MONTGOMERY, MCCLINTOCK
& CUNNINGHAM
Barnett, Montgomery, McClintock
& Cunningham
315-321 Barnett Building
Jackson 1, Mississippi

PRITCHARD, MCCALL & JONES
Pritchard, McCall & Jones
831 Frank Nelson Building
Birmingham, Alabama
Attorneys for Plaintiffs

### DEMAND FOR JURY

Plaintiffs demand a trial by jury.

MALCOLM B. MONTGOMERY
Malcolm B. Montgomery
Of Counsel for Plaintiffs

## Exhibit I to Petition for Mandamus

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 63-166 S

PAUL BRYANT,
*Plaintiff;*

*vs.*

THE CURTIS PUBLISHING COMPANY, a Corporation,
*Defendant.*

Civil Action No. 63-2W

PAUL BRYANT,
*Plaintiff,*

*vs.*

THE CURTIS PUBLISHING COMPANY, a Corporation
and FURMAN BISHER,
*Defendants.*

### DEFENDANT'S APPLICATION FOR REHEARING OF MOTIONS FOR CHANGE OF VENUE

Comes the Defendant, The Curtis Publishing Company, a corporation, in each of the above cases and moves the Court for a rehearing of its motions for change of venue in said cases and as grounds therefor assigns the following:

I.

For that the Court erred in its order of the 31st day of October, 1963, denying defendant's motions in its finding that defendant had not proved a case meriting transfer of these actions on the basis of the convenience of the parties and witnesses.

II.

For that the Court erred in its order of the 31st day of October, 1963, denying said motions in its finding that there had not been established such a strong case of adverse publicity that any jury selected from the Northern District of Alabama would be held to be presumptively biased for Plaintiff and against the Defendant rendering unlikely a trial by an impartial jury.

III.

For that the Court erred in its order of the 31st day of October, 1963, denying defendant's motions in that such order is against the great weight of the evidence which demonstrated from adverse publicity and other evidence introduced in behalf of defendant the existence of actual prejudice and bias for Plaintiff and against Defendant such as to create doubt as to a trial of these cases being had before a fair and impartial jury.

IV.

For that the Court should reconsider these motions in light of the following facts and occurrences since the order of 31 October 1963 denying said motions, to-wit:

1. On 1 November 1963 counsel for Plaintiff in these actions, together with the Jackson, Mississippi law firm of the Governor of Mississippi, Barnett, Montgomery, McClintock and Cunningham, commenced in this Court a civil action entitled Birdsong, etc. vs. The Curtis Publishing Company, a Corporation. Attached hereto as Exhibit "A" is a copy of the complaint in said action.

2. The claim for relief set forth in said complaint arises entirely from events and occurrences in the State of Mississippi and has no connection with or relation to the State of Alabama.

3. Defendant is amenable to the jurisdiction of the courts and subject to service of process in many states throughout the United States of America.

4. The United States District Court For the Northern District of Alabama was chosen by Plaintiff's counsel in said action for the commencement and trial of same for the sole reason that there exists such bias and prejudice against Defendant in this District as to deprive Defendant of a trial before a fair and impartial jury.

5. The commencement and pendency of said action in this District with Ross Barnett, the Governor of Mississippi, as counsel for Plaintiff will intensify the general widespread public prejudice and bias against this Defendant in Alabama as a "Northern Magazine".

The Defendant further moves the Court, in the event this application be denied, to certify that such order denying this application and the order of the 31st day of October, 1963, denying defendant's motions for change of venue involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from these orders may materially advance the ultimate termination of this litigation pursuant to the provisions of Section 1292B of Title 28 USCA.

PEPPER, HAMILTON & SCHEETZ,
GALLOP, CLIMENKO & GOULD,
BEDDOW, EMBRY & BEDDOW

By T. ERIC EMBRY
Attorneys for Defendant

STATE OF ALABAMA }
JEFFERSON COUNTY }

Personally appeared before me, the undersigned Notary Public T. Eric Embry, who, after being duly sworn, deposes and says that he is one of the attorneys of record for The Curtis Publishing Company, a corporation, Defendant in this cause, and has the authority of said corporation to make this affidavit and states that the facts set forth in the above and foregoing Application for Rehearing are true and correct and that the conclusions of law set forth therein he verily believes to be true, and that he makes the above both as an Application for Rehearing and his affidavit in support thereof.

T. ERIC EMBRY

## Exhibit J to Petition for Mandamus

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

Civil Action No. 63-166 S

PAUL BRYANT,

*Plaintiff*,

*vs.*

THE CURTIS PUBLISHING COMPANY, a corporation,

*Defendant.*

Civil Action No. 63-2 W

PAUL BRYANT,

*Plaintiff*,

*vs.*

THE CURTIS PUBLISHING COMPANY, a corporation, and FURMAN BISHER,

*Defendants.*

### ORDER

This matter came on for hearing at this time upon the defendant Curtis Publishing Company's motions for a rehearing of its motions for change of venue, which were denied by order of this court entered on October 31, 1963, or in the alternative, for a certificate under Section 1292(b) of Title 28, U.S.C.A, and upon the plaintiff's motions to strike said alternative motions. The court is of the opinion that each of said motions should be overruled.

It is, therefore, ORDERED, ADJUDGED and DECREED that:

1. Defendant's motions for rehearing be and the same are hereby overruled,

2. Plaintiff's motions to strike be and the same are hereby overruled, and

3. Defendant's alternative motions for certificate under Section 1292(b) of Title 28, U.S.C.A., be and the same are hereby overruled, and the court hereby denies the request for a certificate under said section.

Done and Ordered, this the 26th day of November, 1963.

H. H. GROOMS

District Judge

## Exhibit K to Petition for Mandamus

### SUMMARY OF THE EVIDENCE

The evidence demonstrates that the atmosphere for trial in the State of Alabama is such as to make it impossible that this case be considered by an impartial jury. To illustrate this, the evidence will be summarized along three general lines: That showing such public esteem of the Plaintiff, Bryant, as to preclude impartiality; such hostility to the Defendant as to preclude impartiality; and a public prejudgment of the issues involved in these cases. The following is a summary of the evidence contained in Defendant's Exhibits 1; 4 and exhibits thereto; 5, a-e and 6 a-e. Reference to page numbers are those numbered pages of the exhibits to the Miller affidavit.

### Overwhelming ProBryant Sentiment as Shown by The Affidavits and Exhibits Thereto

Bryant enjoys the status of a public hero. (Embry aff.) Bear Yes, Post No (Embry aff.) Car stickers. People believe Bryant after his TV show denying charges. (p. 12) Overwhelming majority do not believe Bryant guilty of any wrongdoing. (p. 15) People believe Bryant not involved. (p. 23) Everybody but one believes Post's charges against Bryant are false. (p. 25) Bryant not guilty, falsely accused by Post. (p. 30) I hope Bryant gets every penny he is suing for. (p. 30) Bryant is God-fearing, church going, honest and honorable. (p. 32) Bryant is one of the finest men to ever come to Alabama. He has done more to inspire truth, honesty and integrity and to build strength of character in young men than anyone else I have ever known. (p. 79) Cancel subscription because of character assassination of Paul

Bryant. (p. 80) Great injustice to a fine man who has done much for his state and has respect of all Alabamians. (p. 81) Paul is quite a fellow in every sense of the word. His players adore him. (p. 91) Bryant is a fine teacher and builder of young men. (p. 92) Bryant is The Great White Savior. (p. 148) I tolerated Post's slap to my home town (Birmingham) and your insult of its elected officials, but when you slander Coach Bear Bryant, that cannot be forgiven. Cancel our subscription. (p. 149) I could read your article slandering my city (Birmingham), my Governor (Wallace), but when you jumped on the "Bear", you've had it. Cancel my subscription. (p. 161) Cancel my subscription, you have attacked my state, Alabama, my hometown, Birmingham, my University, U of A, the Athletic Director and Coach of my University and the players. I don't want my children exposed to such trash. Keep refund, you'll need it to pay Paul Bryant. (p. 169) The Bryant story is untrue. (p. 207) Cancel subscription, don't want Post in my home; hope Butts and Bryant sue you for enough to put you out of business. (p. 208) Bryant is most respected man in football. (p. 209) An athiest in Alabama is one who doesn't believe in Bear Bryant. (p. 213) Football Fix Story is libelous and contemptible; trash; cancel my subscription, will resubscribe when Butts and Bryant take over your slander sheet. (p. 222) Bear Yes, Post No (Jones aff.) Car stickers. Bear Yes, Post No. (Rice aff.) Car Stickers. People believe Bryant is entitled to the full ten million. (Porterfield aff.) People believe Bryant verdict should be many times the Butts verdict. (Friedman aff.) People say that if they were on jury, they would give Bryant the whole amount he sued for. (MacLeod aff.) Magazine that would print such an article about Bryant should not be allowed to stay in business. (MacLeod aff.)

## Overwhelming Bias Against The Post As Shown By The Affidavits and Exhibits Thereto.

People believe the Post portrays a distorted view of Alabama. (Embry aff.) Loveman's had to eliminate subscription mailing offer because it listed Post. (p. 5) There is bias against the Post for Birmingham story. (p. 5) People resent the Post article about Birmingham. (p. 5) School authorities consider it subversive to offer Curtis magazines in Alabama. (p. 6) Post is pink. (p. 10) Considerable objection to Post because of its stand on segregation issue. (p. 17) People are disgusted with Post for what they regard as persecuti g South, and will not subscribe to magazine which the think hates the South. (p. 10) People resent a Northern magazine doing what they consider condemning the South. (p. 19) Dothan PTA says one more slap at Alabama and we will not deal with Post. (p. 19) Children not allowed to sell magazine which prints such things about South and Alabama. (p. 19) Birmingham story bitterly resented and considered as one sided racial article. (p. 23) Don't want any Curtis magazine after what they did to our Coach. (p. 25) There is intense resentment against the Post as a Northern magazine. (p. 27) Curtis representative was loudly booed upon mention of the Post at gathering in Alabama. (p. 27) People resent Birmingham story, describing it as disgraceful and unfair. (p. 30) People believe Post is anti-south and should be taken off market. (p. 32) Will not support any magazine that writes trash about my coach, Paul Bryant. Cancel subscription to American Home (A Curtis Publication). (p. 32) People believe Post prints one sided articles about the race issue in Alabama. (p. 34) People believe Post prints unfavorable and untruthful articles about the South. They would never buy another issue of Post. (p. 40) Post should have to pay for these libels. (p. 40) Post should stop publication, it is guilty of deliberate slander. (p. 42) Post disliked because of what is considered incorrect portrayal of Southerners. (p. 44) Post should stop publishing because of lies it told regarding Bryant. (p. 48) Post is thought to be prejudiced against South and should stop publishing. (p. 56) Will never again buy Post because it is radically anti-Southern. (p. 60) Post bad mouths South. (p. 60) Post is anti-South and leftist. (p. 62) Post thought to constantly exaggerate racial discrimination in South. (p. 64) Post thought to present a distorted untrue view of South. (p. 68) Curtis should go into bankruptcy because of Bryant article. (p. 69) Another subscriber cancelled Post subscription because of Football Fix story. (p. 71) The Post is resented and disliked because of belief that Birmingham story lies: (p. 71) Birmingham story full of half truths and insinuations, cancel my subscription. (p. 75) Another subscriber cancelled Post subscription because of Football Fix story. (p. 75) Bryant piece is ruthless, vicious, cancell all my Curtis subscriptions. (p. 76) Cancel subscription because of Football Fix story. (p. 77) Cancel subscription because of Football Fix story. (p. 78) Cancel subscription because of Football Fix story. (p. 79) Bryant article a smear. Magazine not fit to be in my home. (p. 81) Cancel subscription because of character assassination of Paul Bryant. (p. 82) Birmingham story full of half truths; cancel subscription; keep money to further your stories against the South and its interests. (p. 82) Cancel subscription, don't want any publication in my home that prints yellow journalism articles such as one about Bryant. (p. 84) Cancel all my Curtis subscriptions because of Birmingham story. (p. 85) Cancel all my Curtis subscriptions because of Birmingham story. (p. 85) Cancel subscription, don't want publication in my home that prints yellow journalism articles such as one about Bryant. (p. 87) So ridiculous it stinks. (p. 88) Post is anti-South. (p. 88) Cancel subscription because you have slandered State of Alabama, University of Alabama and Bryant. (p. 95) Cancel subscription because of sensational journalism such as attack on Bryant. (p. 96) Football Fix story ridiculous cancel my subscription. (p. 97) Cancel all my Curtis subscriptions because of uncalled for and unfair attack on Birmingham and Bear Bryant. (p. 99) Football Fix story trash, cancel my subscription. (p. 100) Post is vicious propaganda machine aimed at South. (p. 102) Football Fix story pure and simple character assassination, cancel my subscription. (p. 102) Attack on Bryant sickens and enrages whole state. (p. 104) Post is communistic, resent articles about University of Alabama and the South. (p. 106) Disgusted by Birmingham story, cancel subscription. (p. 107) Birmingham story despicable misrepresentation. (p. 108) Birmingham story, most disgusting and biggest pack of untruths. (p. 111) Birmingham story abhorrent piece of journalism. (p. 112) Post aims slander at the South. (p. 114) Cancel subscription, Football Fix story scurrilous yellow rag sheet attack. (p. 115) Birmingham story product of scurrilous yellow rag. (p. 115) Post is a propaganda sheet. (p. 116) Birmingham story product of propaganda sheet. (p. 116) Birmingham story cheap, untrue, biased. Post pro everything but the truth. (p. 118) No faith in anything published by Post. (p. 119) Post biased and prejudiced against South. (p. 119) Birmingham story, part of Post pro negro campaign. (p. 120) Birmingham story, deliberate attack designed to damage city. (p. 112) Birmingham story author turncoat reporter. Post belongs in privy. (p. 126) Birmingham story slanted and biased. (p. 128) Post is work of irrational imbeciles designed to pour salt on wounds of South. (p. 129) Birmingham story pointless and without justification, part of hate South campaign. (p. 129) Post periodically persecutes citizens, institutions and Governor of Alabama. (p. 131) Birmingham story, vicious condemnation of every white citizen of Birmingham. (p. 131) Birmingham story, assumptions, half truths, plain lies. Post stinks. (p. 134). Football Fix story character assassination, cancel subscription. (p. 140) Football Fix story degrades University of Alabama. Magazine a rag, not fit to be in home, cancel subscription. (p. 142) Hope you get stuck for $20,000,000. (p. 143) Post is biased toward South and Southerners. (p. 144) Football Fix story irresponsible character assassination, cancel subscription. (p. 145) Football Fix story vicious, lowest form of journalism, cancel subscription. (p. 146) Bryant story is trash; cruel and dishonest; serious abuse of freedom of press, product of desperate cowards, a base act; cancel my subscription. (p. 147) Football Fix story lies, cancel my subscription. (p. 148) Football Fix story is deliberate, unconfirmed, assassination, part of Post's continuous abuse of freedom of press. Don't want magazine in house for wife or children to read; cancel subscription. (p. 150) Post presents unwarranted attack on South. (p. 151) Football Fix story vicious atack on Bryant, cancel my subscription. (p. 151) Cancel subscription. Football Fix story final straw, Post not worth using as waste paper. (p. 152) Football Fix story yellow journalism, offends good taste. (p. 153) Post trying to mongrelize races. (p. 154) Football Fix story yellow journalism, offends good taste. (p. 155) Football Fix story reprehensible attack, cancel subscription. (p. 159) Cancel subscription, angered and disgusted at Football

Fix Story. (p. 160) Football Fix story untruthful; won't have Post in my house, nor allow my children to sell it. Cancel my subscription. (p. 161) Post continuously libels and discredits South. (p. 163) Bryant story is insulting, yellow journalism, cancel my subscription, will do all I can to see that everyone I know cancels. (p. 163) Football Fix story cowardly, contemptible and incredibly irresponsible. (p. 164) Post has a grudge against entire State of Alabama. (p. 164). Post is filthy, yellow journalistic rag engaging in low conniving tactics as part of a hate campaign against white people in South. (p. 165) How did you have the audacity, impudence and temerity to attack Coach Bryant. (p. 168) Football Fix story ridiculous, shows lack of integrity, filled with innuendo and flimsy proof, cancel subscription. (p. 168) Post attacks South and everything Southern. (p. 170) Football Fix story new low in smear, cancel subscription. (p. 170) Cancel subscription. Football Fix story is slander of Bryant and University of Alabama, of whom I'm proud. I will do everything legal to hurt Post. (p. 172) Football Fix story irresponsible journalism, cancel subscription. (p. 177) Football Fix Story is false and ridiculous. Don't want Post in my home. Cancel subscription. (p. 181) Cancel subscription, because you have slandered State of Alabama University of Alabama and Bryant. (p. 183) Football Fix story contemptible, cancel subscription. (p. 185) Football Fix story contemptible, cancel subscription. (p. 187) Post tries to destroy South and our way of life. (p. 187) Anyone who would damage character and reputation of two fine men, doesn't deserve to have magazine read, cancel subscription. (p. 188) Absurd beyond description, cancel my subscription. (p. 191) I cannot abide by yellow journalism and character assassination. I have an idea you will live to regret it.

(p. 192) Due to your policy of sensationalism and scandalism about Birmingham and Coach Bryant, cancel my subscription immediately. (p. 194) Cancel my subscription. Don't appreciate prejudiced articles; keep refund, you'll need it when Bryant goes to court. (p. 195) I am thoroughly disgusted with the Post publication. (p. 196) After reading your venomous article about Coach Bryant, cancel subscription. (p. 197) Your article The Story of a College Football Fix stinks to high heaven. (p. 198) Cancel subscription, football fix inexcusable abuse of Freedom of press; keep refund, you need it to cover libel suits. (p. 199) Post obviously biased toward South; cancel my subscription. (p. 202) Unwarranted attacks on responsible people. (p. 203) Article is cheap, libelous and defamatory to two great football coaches. (p. 204) Birmingham story, written merely to scandalize. Cancel my subscription. (p. 201) Story is cheap libelous and defamatory, never allow Post in my home, cancel subscription. (p. 204) I regard your magazine as trashy. (p. 209). Football Fix Story is ultimate in slanted and biased reporting; an outrage, cancel subscription. (p. 210) Article is disgusting and revolting. (p. 214) You make a mockery of freedom of the press. (p. 217) Cancel subscription. Football Fix story slanderous; hope article ends your villainous career. (p. 218) You have tried to bring dishonor to two fine gentlemen by your slanderous article. (p. 218) I find your magazine biased, sensational, slanted, ridiculously unbelievable and far fetched. (p. 220) Post obviously anti-South. (p. 221) Post does not present true picture of South. (p. 223) Subscriber incensed over Post reporting of Wallace. (p. 224) Majority disagree with Post support of integration and resent what thought to be unfair criticism of Alabama. (Chancey aff.) Post is viewed as a participant in disputes between North and South, Alabama and the Federal Government. (Friedman aff.) They ought to put the Post out of business. (Porterfield aff.) Post should be punished by verdict up to $10,000,000. (Moon aff.) Strong feeling that the Post will deserve whatever it gets at hands of Alabama jury. Majority are determined to show a foreign and what is considered irresponsible press that it can't do this in Alabama. (Fulford aff.) Post regarded as having attacked the integrity of entire state, its university and its people. (Charner aff.) Post is generally criticized for articles about the South and the racial question. (Knapp aff.) Post should be run out of state. (MacLeod aff.) Would give me great pleasure to put Post in bankruptcy. (MacLeod aff.) There is intense dislike for and prejudice against Post. (Knapp aff.) Impossible for Post to have Bryant case judged impartially. (Shortlidge aff.)

## Prejudgment Of The Case As Shown By The Affidavits And Exhibits Thereto

If Butts' entitled to $3,000,000, Bear's entitled to $10,000,000. (p. 19) Bryant story was an unchecked, libelous, character assassination. (p. 52) Post will change editors when Butts and Bryant take over. (p. 66) Story about Bryant is lie. (p. 71) Cancel my subscription. Keep refund, you'll need it for settlement with Bryant. (p. 157) Cancel my subscription, use refund to pay off Bryant. (p. 166) Football Fix Story not true; cancel my subscription. (p. 189) People believe Bryant after his TV show denying charges. (p. 12) Overwhelming majority do not believe Bryant guilty of any wrongdoing. (p. 15) People believe Bryant not involved. (p. 23) Everybody but one believes Post's charges against Bryant false. (p.

25) Bryant not guilty, falsely accused by Post. (p. 30) Post should have to pay for these libels. (p. 40) Post should stop publishing because of lies it told regarding Bryant. (p. 48) Bryant article is a lot of slanderous print. (p. 58) Bryant article slanderous and untrue. (p. 68) Bryant article a smear. Magazine not fit to be in my home. (p. 81) Football Fix story is false and sensational; a jealous slanderous attack. (p. 92) Cancel subscription, because you have slandered State of Alabama, University of Alabama and Bryant. (p. 95) Football Fix story ridiculous, cancel my subscription. (p. 97) Bryant story is trash; cruel and dishonest; series abuse of freedom of press, product of desperate cowards; a base act; cancel my subscription. (p. 147) Football Fix story is lie. (p. 148) I tolerated Post's slap to my hometown (Birmingham) and your insult of its elected officials, but when you slander Coach Bear Bryant, that cannot be forgiven. Cancel our subscription. (p. 149) Cancel my subscription, you have attacked my State, Alabama; my hometown, Birmingham; my University, University of Alabama; the Athletic Director and Coach of my University and the players. I don't want my children exposed to such trash. Keep refund, you'll need to pay Paul Bryant. (p. 169) Bryant story untrue. (p. 207) Cancel subscription. Don't want Post in my home; hope Butts and Bryant sue you for enough to put you out of business. (p. 208) Football Fix story is libelous, and contemptible; trash; cancel my subscription; will resubscribe when Butts and Bryant take over your slander sheet. (p. 222) Football Fix story is slanderous and prejudiced. (p. ) Football Fix story is deliberate unconfirmed assassination, part of Post's continuous abuse of freedom of press. Don't want magazine in house for wife or children to read; cancel subscription. (p. 150) If Butts is entitled to $3,000,000, Bear is entitled to $10,-

000,000. (p. 19) Football Fix story is a lie. (p. 40) Bryant story was an unchecked, libelous, character assassination. (p. 52) Post will change editors when Butts and Bryant take over. (p. 66) Story about Bryant is lie. (p. 71) Football Fix story is a lie. (p. 148) Bryant story is slanderous. (p. 149) Bryant' story is insulting, yellow journalism, cancel my subscription, will do all I can to see that everyone I know cancels. (p. 163) Football Fix story is fabrication; scurrilous attack; lowest point in character assassination, abuse of freedom of press; cancel my subscription. (p. 165) Cancel my subscription, use refund to pay off Bryant. (p. 166) Football Fix story is false and ridiculous. Don't want Post in my home. Cancel subscription. (p. 181) Cancel subscription, you have slandered State of Alabama, University of Alabama and Bryant. (p. 183) Football Fix Story not true; cancel my subscription, (p. 189) Cancel subscription. Don't appreciate prejudiced articles; keep refund, you'll need it when Bryant goes to court. (p. 195) Cancel subscription; football fix inexcusable abuse of freedom of press; keep refund you need it to cover libel suits. (p. 199) Article is cheap, libelous and defamatory to two great football coaches. (p. 204) Story is cheap, libelous and defamatory, never allow Post in my home, cancel subscription. (p. 204) Football Fix story is ultimate in slanted and biased reporting; an outrage, cancel subscription. (p. 210) Cancel subscription. Football Fix story slanderous; hope article ends your villainous career. (p. 218) You have tried to bring dishonor to two fine gentlemen by your slanderous article. (p. 218) Cancel my subscription, keep refund, you'll need it for settlement with Bryant. (p. 157) Football Fix story untruthful; won't have Post in my house, nor allow my children to sell it. Cancel my subscription. (p. 161) Bryant is believed to be entitled to the full ten million. (Porterfield aff.) People believe Bryant verdict should be many times the Butts verdict. (Friedman aff.) People say that if they were on the jury, they would give Bryant whole amount he sued for. (MacLeod aff.) People say that magazine that would print such an article about Bryant should not be allowed to stay in business. (MacLeod aff.)

Within the limitations imposed by time and available manpower excerpts were taken from 33 Alabama newspapers. The total average weekly circulation of the papers is 4,216,349. (Miller Aff. p. 227) The scope of their circulation is co-extensive with the State of Alabama. (Def's. Ex. 2) The matter appearing therein has thus penetrated into every community and into the mind of every prospective juror in Alabama. The material which demonstrates that the bias and the state of mind of the Alabama public exists as we contend has appeared time and time again for many months. The volume of this material reaching the public is evident from a glance at the bound volumes of these excerpts (Deft's. Exhs. 3a-e) as well as that found in exhibits to the deposition of Wanda Bush (Deft's. Exh. 7), Bennett Marshall (Deft's. Exh. 8), Audrey House (Deft's. Exh. 9) and the miscellaneous clippings (Deft's. Exh. 10). It is apparent from this that the more than equal number of other newspapers in Alabama contained similar matter for equally as long a period of time.

The material found in the newspapers' exhibits corroborates that the attitudes expressed by those who have written their opinions to the Post, to the University of Alabama and to various public officials and bodies, are universally entertained in Alabama (Deft's. Exhs. 4, 11, 12 & 13) and surrounding States.

Falling within the same three general categories is the following summary of opinion and attitudes as reflected and generated by items appearing in the bound volumes of the newspaper excerpts offered in this case. These are Defendant's exhibits 3a-e.

### OVERWHELMING PRO BRYANT SENTIMENT

VOLUME I—Bound Newspaper Excerpts

Students join team to defend Mentor. Center, Leroy Jordan stated the general feeling by saying: We don't believe Coach Bryant would do such a thing. Opinions ranged from stark disbelief to Hog-Wash. Bryant appeared on State-wide T. V. saying that he volunteered to take a lie-detector test before an expert and that the lie-detector test completely supports him. (p. 5) Writers find story hard to believe. Butts and Bryant are two of the most highly regarded sports figures who ever graced a Southern gridiron. Wichita football coach said of Bryant, In years to come, this Country will be a lot better because of men like Bryant. (p. 10) Bryant continues to gain support against charges. The Alabama Legislature is considering several resolutions to back Bryant. Over 4,000 students cheered Bryant at a spontaneous pep rally. Senator Jimmy McDown charged the Post with making completely unfounded, sensational, treacherous, jaundiced and vicious charges. (p. 13) Butts' attorney says he has high regard and respect for the character of Paul Bryant. (p. 31). Bryant's former coaches and players give him full support. Articles state that men who should know stand up for Tides' Bear. Former coaches say they would never believe Bryant would do this. (p. 32) Alabama Alumni rally behind Coach Bear Bryant. Oakley Melton, Jr. past president of the Alumni and former houseclerk said he thinks the Saturday Evening Post Article is a disgrace. (p. 39) Student leaders, star football player at Bama express confidence in Bryant. (p. 55) After investigation of the rumors and charges in the story, President Rose of Alabama stated that he found no evidence of any kind that would implicate Coach Bryant in any way with rigging or fixing or betting on football games. Editor speaks up for Bryant integrity. (p. 56) Alabama Alumni rally behind Coach Bear Bryant. Thomas F. Parker, President of the Montgomery Chapter, Alabama Alumni said in his opinion the charges made by the Saturday Evening Post are ridiculous. He hopes the Post is held fully accountable for the unwarranted damage done. (p. 63) Editorial says he and others do not believe the magazine article. They consider the evidence clear and the conclusion justified that the magazine charge is baseless. (p. 80) Trustees publicly praise Bryant and express confidence in him. (p. 81) Student Body and Student Legislature, back Bryant. Through the crowd that rallied behind Bear were waved posters: We Back Bear, Bear Plays Square, and To Hell With the Post. (p. 83) Alabama Players testify in secret for Committee. (p. 91) Rose, Alabama President, says Bryant innocent of charge. Rose stated that after a careful and thorough investigation he had found no evidence of any kind that Paul Bryant in ~~any way, rigged,~~ fixed or bet on football games. (p. 100) Collusion charge branded as fantastic; incredible. (p. 126) Bryant Clan stands behind the Bear in Game-Fix allegation. Bryant hailed by former players as being great. (p. 135) Nothing unusual, says Tide senior about Georgia game preparations. Senior, Jimmy Sharpe, said the reason Alabama beat Georgia was that Georgia was not ready for Joe Namath. (p. 141) Bryant clear on lie-detector test. Bryant stated on T.V. he had nothing to hide. He said he volunteered for a lie-detector test and that the report supported him. (p. 142) Leroy Jordan says Namath did it, not information. Student body president says we believe in Bryant and what he tells us. Southern Scribes say, Charge of collusion fantastic, incredible. (p. 144)

VOLUME II

Letter to the Editor expresses contempt for those (Post) who have made false accusations against those two fine men (Bryant and Butts). (p. 158) The Tuscaloosa News in an Editorial expresses its unequivocal support of Coach Bryant. (p. 165) The Bryant Clan, a group of head coaches who have played under Bryant, publicly announce their support of Bryant. They include Phil Cutchin of Oklahoma State, Jerry Claiborne of VPI, Paul Dietzel of Army and Coach Owen of the Washington Huskies. (p. 170) In years to come, this country will be a lot better because of men like Bryant. (p. 180) Jefferson County Alumni give Bryant a vote of confidence. (p. 185) All-American, Leroy Jordan said, We don't believe Coach Bryant would do such a thing. (p. 223) Bryant and Butts get backing from Alabama Legislators and sportswriters all over the nation. (p. 230) The Baldwin County University of Alabama Alumni Club has voiced strong support of Bryant. (p. 254) Bryant named honorary Mayor of Bessemer at Bear Bryant Day. (p. 261) The Bullock County Alumni Association of University of Alabama backs Bryant. (p. 262)

VOLUME III

Rose finds no evidence of collusion charges. (p. 323) Bear defended—Board of Trustees defend Paul Bryant. (p. 324) We don't believe it because the whole story is fantastic and unbelievable. (p. 401) Butts tells of knowing Bryant for years and emphatically denies they were in collusion as charged by the Post. (p. 455)

VOLUME IV

Huddleston says Bryant has dedicated his life to the youth of our country. (p. 519) Leroy Jordan defends

Bryant. (p. 551) Southern sportswriters term story incredible. (p. 551) Students and players defend Bryant. (p. 552) Students rally for Bryant. (p. 581)

### Volume V

Generally, sentiment is in favor of Butts and Bryant, with an almost unanimous desire for a decisive conclusion to the matter. Bryant clan composed of Cutchin of Oklahoma State and Claiborne of VPI and others, expresses support of Bryant. (p. 713) The Anniston and Calhoun County Alumni express their faith in Bryant and back him 100%. (p. 725) Board of Trustees vote for the Bear. (p. 728) Rose backs Coach Bryant. (p. 730) State Unites Behind Bear, Students, Alumni Resolve Bryant Innocent of Charge. (p. 621) Bryant refused to accept secret film of L.S.U. practice. (p. 635) Tuscaloosa Circuit Solicitor Nicol, who administered the lie detector test to Bryant says he believes Bryant. (p. 637) Students at University of Alabama are 100% behind Bryant. (p. 660) Bryant receives telephone calls and letters from players and coaches from all over the U. S. expressing every confidence in him and general praise. (p. 669) Polygraph test said to support Bryant denial. (p. 678) Four thousand students cheer Bear at pep rally. (p. 681)

## Overwhelming Bias Against Post

### Volume I—*Bound Newspaper Excerpts*

Benny Marshall of the Birmingham News stated it would take more than the Saturday Evening Post to convince him of the story. Marshall called it a fantastic presentation. (p. 7) Radio Station requests outlaw publication. Alabama Board of Trustees condemned what it called scurrilous attacks on Alabama by irresponsible sources and publications. Alabama Representative George Huddleston stated the article contains no evidence to support the contention that the football game was fixed. (p. 10) Editorial. All too often nowadays that means changing a community's image to conform to something manufactured out of articles in the Saturday Evening Post. (p. 76) It's outrageous the way those northern magazines are attacking Alabama, Bear Bryant, Birmingham and the people in this State. (p. 125) If the charges cannot be proven the magazine should be put out of business. The damage of the story is great to the Southeastern Conference. (p. 126) Support strong for Bear; Post condemned. A dummy was hanged with the cover of the Post pinned on it. (p. 128) Senator Jimmy McDown charged the Post with making completely unfounded, sensational, treacherous, jaundiced and vicious charges. He said the Post has become a periodical devoted to yellow journalism in which the South, the nations greatest stronghold of true American patriotism and pride, is made the whipping boy. (p. 128)

VOLUME II

Letter to the editor charging malicious falsehood, character assassination, inquiring how long it will be before the Post ceases to exist as a national publication. (p. 154) Letter to the editor expresses contempt for those (Post) who smear the reputation of our better athletic directors (Bryant). (p. 158). The Post cannot be relied on as a magazine which prints the truth, but one which believes in falsehoods and sensationalism. (p. 180) If the Post will leave him (Bryant) alone, he will be one of the greatest coaches that ever lived, Huerta said. (p. 180) WTBC called on Alabama Legislature to outlaw the Saturday Evening Post in the State. (p. 180)

VOLUME III

Butts' attorney said magazine article was and is not true and Post based the story on flimsy evidence. (p. 347). Bernie Moore said the verdict of Butts' libel suit has proved extremely reckless journalism in the accusations of the so-called fix of the 1962 Alabama-Georgia game. (p. 368) Assistant football coach of Georgia discounts charges Bryant, Butts fixed game. (p. 388) Editorial states there is no place in the country for dishonest magazines. (p. 447)

VOLUME IV

Alabama trustees condemn Post. (p. 548) Charges have political overtones. (p. 568) No evidence seen of Butts gambling. (p. 572) Post accused of character assassination. (p. 572) Charges unbelievable. (p. 577) Students rally for Bryant. (p. 581) Charges called a joke. (p. 598) Cook's report of truth of charges unfounded. (p. 600) Cook determined to find Butts guilty. (p. 601) Ex-Georgia stars rally behind Butts. (p. 610) Saturday Evening Post putrid toward South. (p. 614) Post engaged in anti-South crusade. (p. 617) Let the guilty suffer (Post). (p. 619)

VOLUME V

The University's largest alumni group, the Jefferson County Alumni, publicly deplored the untrue, unfounded and libelous character assassination made solely for selfish gain by the Saturday Evening Post. Resolutions flood the Alabama Legislature eager to condemn Post for article concerning Butts and Bryant. Legislators allege, yellow journalism, cruel hoax, completely unfounded, sensational, treacherous, and vicious charges. (p. 621) Montgomery alumni of Alabama say charges by Post are ridiculous. (p. 622) Frank McGough, former President of Alabama Alumni Association says he has every confidence in the integrity of Coach Bryant. The accusations made by Post are completely without foundation and represent the lowest form of journalistic reporting. (p. 622) Editorial says Post story reads like science fiction and fiction it is. (p. 680) Editorial insinuates that Post paid off Burnett. (p. 688) Editorial. Post Falsifying Again. (p. 731) Editorial—The Post article, in our opinion, was a vicious and unjustifiable attack on two outstanding Southern athletic leaders. (p. 756) Editorial says jury verdict (Post-Butts) is fair warning to Post and any other magazine that people will not permit reckless, irresponsible and malicious reporting. (p. 774)

## Prejudgment of the Case

Volume I—Bound Newspaper Excerpts

Alabama Gridiron Mentor gets backing of Trustees; the Board feels sure that subsequent investigations will vindicate Bryant's personal integrity and his loyalty to the University of Alabama. (p. 10) Federal Attorney seeks probe of wire tap. Macon Weaver said he asked for the probe after a number of complaints were received by his office. (p. 11) The Legislature of Alabama is considering several resolutions to back Bryant. Senator Jimmy McDown charged the Post with making completely unfounded, sensational, treacherous, jaundiced and vicious charges. (p. 13) Representative George Huddleston, Jr., D-Ala., complaining about a Saturday Evening Post article, asked the Magazine Publishers Association Saturday to police its own ranks. Huddleston said the article is an example of shoddy and irresponsible reporting. Huddleston said the article contains no evidence to support the contention that the game was fixed. (p. 16) Alabama Attorney General, Richmond Flowers, said the Post article is not sufficient to warrant an investigation by his office. (p. 50) Alabama Board of Trustees passed a resolution that they are fully behind Bryant and publicly expressing confidence. (p. 81) Representative George Grant, D-Ala., has branded as fantastic a story by the Saturday Evening Post which charges collusion in the Alabama-Georgia football game last fall. Said Bryant has a reputation for honesty and integrity built over many years. (p. 148)

VOLUME II

The Bryant Clan, a group of head coaches who have played under Bryant, publicly announce their support of Bryant in the Post controversy. They include Phil Cutchin of Oklahoma State, Jerry Claiborne of VPI, Paul Dietzel of Army and Coach Owen of the Washington Huskies. (p. 170) A special legislative committee reported to the Alabama Legislature that it found no evidence worthy of belief to support claims by the Post that the Georgia-Alabama football game was rigged. (p. 171) Legislative committee members conclude that Georgia politics has been a major factor in the situation. (p. 172) Bryant says he passed lie test and denies all charges, with full support of University of Alabama President, Rose. (p. 176) Former Tide lineman, Jimmy Sharpe, found nothing unusual before game. (p. 178) The Alabama Board of Trustees publicly expressed its confidence in and support of Coach Bryant. (p. 179) Bryant told a statewide television audience that the Post article is another attempt to destroy me and my reputation for honesty and integrity in order to affect the presentation of my case in the pending suit. (p. 182) Craig Knowles of Huntsville, sports editor of the Crimson White, student weekly, predicted Bryant would be completely exonerated. (p. 185) In Washington, Representative George Huddleston, Jr., D-Ala., described the Post article as distorted and defamatory. (p. 189) We believe Bryant spoke the truth in denying all the charges against him. (p. 252) Georgia politics major factor in fix charges. (p. 280)

VOLUME III

Southern Coaches along with Bernie Moore hail Wallace Butts' libel suit verdict. (p. 319) Editorial states Bryant's verdict will be considerable larger. (p. 320) S.E.C. leader says dark cloud lifted, because of Butts' verdict. (p. 383)

VOLUME IV

Huddleston charges story is a fix. (p. 519) Leroy Jordan to testify before Legislature. (p. 537) Senator Jimmy McDown of Shelby. (p. 537) Dr. Rose testifys before legislative probe group; Representative Alton Turner; Trippi praise Bryant. (p. 540) Justice Department says no federal laws violated. (p. 546) Trippi calls charges ridiculous. (p. 547) Alabama Trustees voted unanimously to support Bryant. (p. 548) Flowers says politics partly behind charges. (p. 557) Legislative Committee finds no evidence worthy of belief. (p. 558) Coaches back Bryant. (p. 566) Flowers wants lie test for Bisher. (p. 574) Nothing unethical about info swap, Southwestern Conference Coaches say. (p. 576) U. S. Attorney calls for FBI investigation of Post. (p. 582-3) Senator Neil Metcalf accuses Post of cruel hoax and a campaign of vilification, slanders and insults, accusations and distortions. (p. 582) Bryant gets backing. (p. 584) Flowers says allegations are false and Bryant not guilty. (p. 592) Flowers charges politics and Georgia probe an aid to sacking Butts. (p. 593) Nicol, Circuit Solicitor, says Bryant tells the truth. (p. 608) President of National Football Foundation says story is character assassination of all associated with football. (p. 610) Montgomery Alumni behind Bryant-Rose; condemn character assassination. (p. 616) Representative Grant says Butts and Bryant above reproach. (p. 619) U. S. Attorneys say it is illegal to intercept telephone message. (p. 619)

VOLUME V

Resolutions flood the Alabama Legislature eager to condemn Post for article concerning Butts and Bryant. Legislators allege, yellow journalism, a cruel hoax, completely unfounded, sensational, treacherous and vicious charges. (p. 621) Mayor Arthur Hanes of Birmingham denounces Post, using such words as cowardly, treacherous, sensational and smacking of jealousy, innuendo, distortion and untruths. (p. 623) Investigating legislators said they have found no creditable evidence to support charges that last years Georgia-Alabama football game was rigged. (p. 627) Tuscaloosa Circuit Solicitor Nicol says he believes Bryant. (p. 637) Dr. Rose expresses support of Bryant. (p. 652) Representative George Huddleston, Jr. charged the Post was out to wreck the career of Alabama Coach Bryant. Huddleston has prepared speech for House delivery. (p. 654) Football player Leroy Jordon in Tuscaloosa says that none of the coaches told him anything about Georgia that he did not already know and that the other players will tell you the same thing. (p. 678) University of Alabama Trustees unanimously back Bryant in a statement which said it publicly expresses its confidence in and support of Coach Bryant. (p. 679) Editor and publisher of the Decatur Daily said that the courts will not have two suits to decide and he (the editor) would not give a plugged nickel for the chance of the Saturday Evening Post to win either suit. (p. 683) Attorney General Richmond Flowers has requested a chance to go to bat for the University of Alabama football coach, Paul Bryant, before NCAA. Flowers says he is convinced that the charges by Post are ridiculous. (p. 701) Governor Wallace commented regarding the Post-Bryant controversy that he will stand with the Alabama people and called the Post a rag sheet. (p. 721) Bernie Moore said the $3.06 million judgment for Butts clearly indicates the magazine (Post) was guilty of reckless journalism. (p. 754)

The foregoing summary of the content of the five bound volumes of newspaper excerpts (Deft's. Exh. 3a-e) is merely a digest of the typical comment contained in the articles; editorials, letters to the editor, and other news items found therein. It represents only a portion of the entire content of that exhibit, but more than sufficient, we think, to demonstrate to the Court the sufficiency of it in nature, scope, extent and penetration to show bias requiring removal of these cases to another forum for trial.

Excerpts from the two Montgomery daily papers were obtained by taking the deposition of Wanda Bush, Librarian for the Montgomery Advertised and Alabama Journal. Reference to numbers or letters designates the exhibit to her deposition. These are summarized along the same lines as the previous evidence. This entire group is Defendants' Exhibit 7.

## Overwhelming Pro Bryant Sentiment as Shown By Exhibits to the Deposition of Wanda Bush

Bryant brands charge of brutality as absolutely false. (1) A.P. trophy for number 1 team awarded to Bryant. Statement that Bryant joined such great coaches as Knute Rockne, Bob Zuppke and Bernie Bierman. (3) Bryant named as 1961 coach of the Year by American Football Coaches Association. (4) Bryant receives solid endorsement from University of Alabama alumni in Washington, including U. S. Sen. John Sparkman, Lister Hill and Representatives George Andrews, Albert Rains, Robert E. Jones and George Huddleston Jr. Hill described Bryant as the greatest coach of the greatest team in the country. Frank Rose stated, I know of no man who has higher moral standards than Coach Bryant. Bryant said he wanted to even the score for the University and the football team. (16) Senators Back Bear Bryant in Post Stand. (23) Bryant's record and success, are reviewed. Bryant characterized as Hollywood's idealized concept of the good guy in a western melodrama, full of homespun charm, charming personality with an amazing overall record as head coach in the toughest kind of competition. (35) Bryant's attorneys, McCall & Pritchard, attack report by Attorney General Cook of Georgia as unwarranted and inaccurate. (37) University extends Bryant's contract to ten years and raises pay to $18,000 per year. Rose said Bryant is not only a great football strategist, but he is a man of great integrity who has the proper respect for the University's academic program. (42) Alabama House of Representatives adopted resolution commending Bryant as number one coach of number one team in the nation. (43) Representative George Grant said he was amazed and stunned by the charges of collusion, called Bryant and Butts above reproach. (82) 4,000 students on University of Alabama campus cheer Bryant —posters in crowd, We Back Bear, Bear Plays Square, To Hell With The Post. Dummy with cover of Post pinned to it hanged in effigy on campus. Jefferson County alumni resolution, deplored the untrue, unfounded and libelous character assassination made solely for selfish gains. (85) Bryant credited with restoring Alabama football to success and improving whole sports program at University of Alabama. (106) Alabama team voted national championship. (107)

## Overwhelming Bias Against Post As Shown By Exhibits To Deposition Of Wanda Bush

After verdict for $3,060,000 Butts said he would not be sorry to see the Post go out of business. (8) Post Story Held Libelous. (12) Board of Trustees of University of Alabama issued a resolution in support of Bryant and said it resents the scurrilous attacks made on the University and the State and expressed confidence Bryant will be completely vindicated. (52) Butts contends Curtis Publishing Co. resorted to lurid and defamatory articles about nationally known figures in an apparent last ditch effort to bolster its sagging circulation which in turn would increase advertising revenue. (25) Governor George Wallace said I don't know anything about it, but I'll tell you this, the Saturday Evening Post is the sorriest authority on the truth., (46) Several resolutions were introduced in Alabama Senate denouncing the Post. Senator Callahan of Tuscaloosa stated there were almost as many resolutions as there were members, (54) Sen. Neil Metcalf of Geneva County accused the magazine of a cruel hoax and a campaign of villification, slanders and insults, accusations and distortions. (54) Sen. Jimmy

McDown of Shelby said article completely unfounded, sensational, treacherous, jaundiced and vicious charges * * * the Post has become a periodical devoted to yellow journalism in which the South, the nation's greatest stronghold of true American patriotism and pride, is made the whipping boy. (54) Governor George Wallace said he will stand with the Alabama people and called the Post a rag sheet. (71) Plans on University of Alabama Campus are to have a Saturday Evening Post bonfire. Reaction of majority of students is angry disbelief. For a national magazine to carry such a story on *The* Big Man on Campus—Bryant—is hard to take at a school where football is just as big a part of the curriculum as going to class. Fantastic is common term used to describe the story. (87) Attorney General Flowers says purpose of article is to hang Butts for supporting Marvin Griffin in governor's race. (99) Chester J. LaRoche, president of the National Football Foundation calls Post article character assassination of the thousands of players and coaches associated with the game in honor and good sportsmanship. (109) $5 Million Punitive Damage considered by Butts Jury. (D). Butts' Help Denied by Lee Roy Jordan. (W) Post Story Held Libelous. (Z)

## Prejudgment of the Case As Shown By Exhibits To The Deposition Of Wanda Bush

Attorney General Richmond Flowers called rigging charge a political kettle of fish brought on by Butts' political activities and called the accusation ridiculous. (18) United States District Attorney said in his opinion the whole thing was a hoax. (18) Attorney General Richmond Flowers requested a chance to go to bat for Bryant before N. C. A. A. to present new facts which he said would help clear Bryant. Flowers said he is convinced Bryant is innocent of unethical or unsportsmanlike conduct and that charges brought against him in the Post are unfounded and ridiculous. (19) Everyone has more or less accepted fact that Post off base . . . most of people are angry. The Post is just trying another sensational stunt. (49) I think the whole thing is ridiculous. I hope they sue the Post for a trillion dollars. The Post is noted for its biased opinion. The Post is just down on the South and Alabama and this is just another example of the Post hunting for something to pick on us about. (49) Bryant said that he planned to own the Saturday Evening Post. (49) It's obviously a false accusation. . . . It seems to me that the Saturday Evening Post is just looking for sensation. (49) State Legislature called on to ban the Post from Alabama. The Post cannot be relied upon as a magazine which presents the truth but one which believes in falsehoods and sensationalism. (49) All American Lee Roy Jordan said in an interview that there is no foundation of fact either in the article or in the charges. (51) Bernie Moore, Commissioner of Southeastern conference said he didn't think Bear Bryant or Wally Butts would bet on a football game . . . that he just doesn't believe it. (55) Editorial referring to Rose's explanation of letter to Dr. Aderhold of Georgia states that the explanation of what the coaches discussed is plausible to us. (77) Sports Editor's comment indicating belief in falsity of charge quotes Bryant to effect that somebody is going all out to pin something that didn't exist on him and Butts. (78) Lee Roy Jordan said that accusation against Bryant is work of jealous people, that somebody is trying to degrade Bryant and he would sure like to get a good tackle at the guy or guys who are attempting to fix our coach. (78) Sports editor says call was made by Butts to interpret rules changes as member of rules committee and stating there is no evidence of a fix. He also questions Burnett's delay in reporting call. (79) Alabama Legislature appointed committee to investigate the charges and adopted resolution indicating the House and Senate had grave doubts about the Post article. (81) Montgomery chapter Alabama Alumni adopted a resolution stating members condemn, deplore and resent the character assassination, purposely committed by the incredible charges and insinuations attacking the integrity and the professional conduct of Coach Paul W. Bryant . . . Welcome full and complete investigation, that we are confident will fully vindicate the position of Coach Bryant and will brand and reveal the charges which have been made against him and the sinister motive behind them for what they really are. (81) Representative George Huddleston in a speech in U. S. House of Representatives described article as distorted and defamatory and stated that by the skillful manipulation of facts and quotes, the article endeavors to destroy the reputation of two outstanding college coaches when the facts will not uphold the contention that a fix was on. (81) Sports editor says charges against Bryant are fantastic and flimsy. (84) Bryant and Butts are supported by public sentiment. Very unlikely that charges will be found to be true. (84) Board of Trustees of University of Alabama unanimously back Bryant. (92) Radio Station WTBC urged legislature to outlaw the Post in Alabama. (92) Prominent citizens and fellow coaches back Bryant. (92) Frank Howard, Clemson, said It makes me sick. I think it's a terrible thing when they make up stuff like that for print. There's not a bit of truth in it. (92) Jeff Beard—Auburn, said he thinks there is not a word of truth in it . . . he hopes all Alabama people will rally behind Bryant and lick this thing. (92) Neal Posey—Huntingdon College, said it was trash . . . Post willing to do anything to get circulation. (92) Carney Laslie—Alabama, said the whole thing is ridiculous. There's no truth to the story and I just hope that the persons responsible for these accusations have to pay the price. (92) Austin R. Meadows—State School Superintendent, said it was the most preposterous charge I've ever heard. It is ridiculous to think that such a thing could happen. (92) Charles Stakely—local attorney, said he was 100 per cent behind Bryant and Frank Rose. I don't believe it by any stretch of the imagination. (92) Bill Graham—Chamber of Commerce Publicity Director, said he thinks the whole thing is ridiculous. (92) W. O. Craken—President, Montgomery Auburn Alumni said it was an asinine story for a magazine to publish. (92) Aaron Aranov—businessman, said Bryant had convinced him there's not a word of truth in the whole thing. (92) James J. Carter—President, Alabama State Bar, said he didn't think there was anything to it. Dr. Rose says there is nothing to it and that is good enough for me. (92) Cliff Harper—Executive Secretary, Alabama High School Athletic Association, called it irresponsible reporting . . . in order to create a so called sensational article to make their magazine sell. Slanderous journalism. (92) Thomas F. Parker—President, Montgomery Alumni Chapter, said charges are ridiculous. I hope the Post is held fully accountable for the unwarranted damage done to the reputation of two fine coaches. (95) Walter F. Kennedy—President, First National Bank, said he is absolutely convinced by Bryant's TV statement. (95) Oakley Melton—Past President Montgomery Alumni, said the Post story is a disgrace. (95) Bobby Wilson—Coach Lanier High, said he could not believe any part of the accusations. (95) Tom Jones—Coach, Lee High, said the whole thing is absurd. (95) Frank McGough, former Vice-President, Alabama Alumni Association, said the incredible accusations made by the Saturday Evening Post against him (Bryant) are completely without foundation and represent the lowest form of journalistic reporting. (95) Alabama Legislature Committee reports there is no credible evidence or evidence worthy of belief to support Post article. (122)

Number references are to the exhibits to the deposition of Jefferson Coleman, Director of Alumni Affairs and Secretary of National Alumni Association, University of Alabama.

### OVERWHELMING PRO BRYANT SENTIMENT AS SHOWN BY EXHIBITS TO THE COLEMAN DEPOSITION

37,166 Alumni in State of Alabama as of September 12, 1963, Alumni in counties comprising Northern District—23,973, Behind Bryant 100 per cent. (10) Alumni Groups publicly support Bryant and condemn Post. Have absolute confidence in Bryant. (3)

### OVERWHELMING BIAS AGAINST POST AS SHOWN BY EXHIBITS TO THE COLEMAN DEPOSITION

Deplore false, scurrilous and flagitious attack upon Bryant. (6) Resent character assassination which has been purposefully committed. (Copy to all news media) (7) Publicly deplore the untrue, unfounded and libelous character assassination made solely for selfish gain by the Saturday Evening Post. (8A)

### PREJUDGMENT OF THE CASE AS SHOWN BY EXHIBITS TO THE COLEMAN DEPOSITION

Press release for newspapers, radio, television and press associations. Other alumni groups interested in similar resolutions. (8D) Investigation will fully vindicate

Bryant position and will brand and reveal the charges and sinister motives behind them for what they really are. (11)

The following excerpts are from exhibits to the deposition of Bennett Marshall, Sports Editor of the Birmingham News. (Def's. Ex. 8) The exhibits to the deposition consisted of news articles and columns that had appeared in the Birmingham News each of which was given a number as an exhibit to the deposition. The numbers accompanying the following excerpts are the numbers given to the exhibits to the deposition from which each excerpt is taken.

### OVERWHELMING PRO BRYANT SENTIMENT

Marshall's column—On television Bryant faced the people of Alabama. And then he hit. He hit again. Halfway through he came to the clinching argument, the new bombshell aimed at rumors he had bet, the story full of strangeness which branded him and Butts fixers . . . riggers. The voice was angry, for Bryant was angry and the eyes signalled willingness to fight back in defense of honor and integrity and Alabama football. Defense? It was offense Sunday afternoon . . . The life and career of Paul Bryant were face to face with the greatest crisis of his life. But Paul Bryant always was a Big Game Man. Sunday afternoon he was winning again. (2)

### OVERWHELMING ANTI-POST SENTIMENT

Governor George Wallace said he didn't know anything about it, but the Saturday Evening Post is the sorriest authority on truth. (1) The almost complete absence of normal reportorial verifying of information by Graham is nothing short of astounding. (9)

## Prejudgment of the Case

Bryant, Butts deny game rigging count in new Post blast. (1) Butts said the article contains highly insulting and utterly false charges against him. (1) Bryant's attorneys said the article is but a renewed effort on the part of the Post to discredit Southern Football and more particularly the coach of the No. 1 team in football in the United States. (1) Butts lawyers termed the article character assassination. Said Post relied upon the word of one man who acknowledges that he had been convicted of writing bad checks. (1) Namath passes, not collusion, beat Georgia says Lee Roy. All American Lee Roy Jordan said Alabama won over Georgia because of Joe Namath's passing and not because of any alleged collusion between coaching officials. We don't believe Coach Bryant would do such a thing. There is no foundation of fact either in the article or in its charges. (2) Front Page Banner Headline—Who's the fix story villain. (3) Rep. George Huddleston Jr. blistered the Post in a speech prepared for delivery on the House floor. U. S. Attorney Macon Weaver requested an investigation to determine whether the Post violated federal law and indicated that a conspiracy case might be planned involving the Post, its writer (Frank Graham) its source (Burnett) and anyone else who might have had a connection with preparation of the magazine article. (3) Attorney General Richmond Flowers and the Alabama Legislative Committee reported that investigations showed Bryant was innocent of the charges. The committee said there was no creditable evidence to support them. (4) Marshall's column states that charge of rigging is an outgrowth of incident in Alabama-Georgia Tech game of 1961 when Darwin Holt injured Chick Granning. Indicates Furman Bisher behind it all. (5) Headline

—Trippi, Jordan Scoff at Fix. (6) Georgia's greatest football player ever, Charlie Trippi, and a mighty and famous one from Alabama, Lee Roy Jordan, teamed together under oath in Federal Court to scoff at the charge that last Tide-Bulldog game was rigged and fixed. Trippi ridicules grid fix charge. (6). Headline—Burnett phone notes switched, court told. (7) Richmond Flowers representing the State of Alabama at Butts trial in Atlanta said: You can say, yes sir, you can say, that we've found nothing in coach Griffith's testimony that does anything but substantiate our committee's finding that Paul Bryant is blameless and guilty of no unethical conduct. (8) John Carmichael is the hero of the case for coming forward to testify to contradict Burnett. (11) Defense attorney Cody's remarks in argument is to true scholars of libel law 100% corn from the bottom of the bin. He tries to cover up mistakes by taking off on flank attacks. (11) After verdict in Butts case—F. M. Williams, one of the real pros in our profession, wrote the finest story he's ever done Tuesday. It lasted two paragraphs.—Paul Bryant made another telephone call to Wally Butts today, wrote Williams. Hey Wally, said Bryant, what happened to the rest of the ten million? (12) Birmingham News August 18, 1963—Benny Marshall's column at end of Butts trial—Way back there in the beginning when Saturday Evening Post had gone to market with a strange article, I wrote a column which said Saturday Evening Post made no case. As the last hours of Wallace Butts $10,000,000 libel suit come on, the same testimony will be offered again. Challenged to prove its charge that Butts and Bryant had fixed the Alabama-Georgia game of last September, the Post hasn't done so in the court room where I've lived for two weeks. Mr. Cody representing Post said. Nobody denies there were some mistakes in the article. This may be regarded as the understatement of the year, possibly of the decade, maybe of the century. Testimony has riddled the article. It stands as a monumental piece of journalistic inaccuracy. Reporters everywhere must be shamed by the job Frank Graham Jr. and Furman Bisher did with small regard for the havoc they were about to create in the lives of many men. (10)

The following excerpts are from exhibits to the deposition of Audrey House, Librarian of the Birmingham News (Def's. Ex. 9) and are from the files maintained by the News of clippings from that newspaper. The exhibits are contained in two envelopes, one containing the clippings from the News file pertaining to Paul Bryant (1-52-Bryant) and the second containing clippings from the News file pertaining to Wallace Butts (1-24-Butts). Each clipping was given a number as an exhibit to the deposition and the references contained herein are to those numbers. Where reference is to one from the Butts' envelope it is so indicated.

## OVERWHELMING PRO BRYANT SENTIMENT

January 14, 1962—Bryant chosen coach of the year. (2) Bryant presented a certificate naming him lifetime honorary mayor of Bessemer by Mayor Jess Lanier. (17)

## OVERWHELMING BIAS AGAINST THE POST

A sensation seeking magazine . . . Bryant has been under increasingly vitriolic attack by national publications as his success has soared. (9) U. S. Attorney Macon Weaver has called for an investigation of violation of federal law and stated the article was in effect a confession to violation of the law. (12) Post is way out on a legal limb. Several newspaper correspondents remarked that the Post must be getting pretty desparate to pump up a story like that and call it the most shocking sports scandal since 1919. (13) Congressman George Huddleston, Jr. wrote to Magazine Publishers Association asking the group to police its own ranks. He called the article an example of shoddy and irresponsible reporting and based on presumption, half-truths and spurious information. (18)

### PREJUDGMENT OF THE CASE

Benny Marshall column: It'll take more than Post has shown in its fantastic presentation to convince me that Butts who made Georgia could ever betray Georgia. (9) Bear challenge to magazine :to be aired on T.V.—Bryant will take to T.V. to deny charges in Post article with the program to be carried on these stations: WAPI-TV Birmingham, WOWL Florence, WMSL Decatur, WAFG Huntsville, WCOV Montgomery, WSFA Montgomery, WKRG Mobile, and WTVY Dothan. (10)

Rose supports Bryant in denial of football fix—Bryant took a lie detector test then fired an angry shot that echoed across the nation in his new war with Post. Dr. Frank Rose stood and seconded the cannonade. On T.V. Rose said he found no evidence of any kind that would implicate Bryant in any way with rigging, or betting on football games. A real injustice has been done to the University of Alabama and Coach Bryant. Bryant said with first suit in mind, it is more obvious than ever that this article is another attempt to destroy him and his reputation for honesty and integrity in order to affect the presentation of my case in the pending suit. I think it'll make you mad like me and I think you will agree that its a series of misleading inferences. One of the worst things to come from this is that it is a reflection on the ability and performance of the University of

Alabama football players. (10) Dr. Frank Rose said investigations would vindicate both Bryant and Butts, and that the Board of Trustees and Student Body remain 100% behind Bryant. (37) Witness says Burnett twisted tale for Post article. (38) Alabama legislative committee reported that the evidence does not support charges made in the Post article, and there is no credible evidence of illegal corrupt, unethical or unsportsmanlike conduct and no evidence worthy of belief. (40) Attorney General Richmond Flowers called the rigging charges political and said it appeared Georgia wrote the verdict and then went out to get the evidence. The whole thing is a political kettle of fish and the accusation is ridiculous. U. S. Attorney Macon L. Weaver said the whole thing is a hoax. (43) Bryant said money is not enough for what they have done. (52) Southeastern Conference Commissioner Bernie Moore stated after Butts verdict that a dark cloud over college football was lifted and the verdict clearly indicates the magazine was guilty of reckless journalism. (20 Butts) Birmingham News editorial—The Post stands condemned of rotten journalism. (21 Butts).

The following excerpts are from newspaper clippings from Deft's. exhibit 10, which was referred to at the hearing as miscellaneous newspaper clippings. The pages of the exhibit have been numbered consecutively and the numbers accompanying the following excerpts are the numbers of the pages on which the article from which the excerpt was taken appears.

### OVERWHELMING PRO BRYANT SENTIMENT

Dr. Rose backs Bryant. He finds no evidence of any kind that would implicate Bryant's rigging, fixing or betting on football games. (18) At Tuscaloosa, a deluge of mail to Coach Bryant continued to pour in. The letters were reported to be 99% favorable. (157) When Bryant addressed the City of Bessemer a crescendo of applause was reached and held for a full ten minutes. (173)

### OVERWHELMING ANTI POST SENTIMENT

Birmingham upset over critical magazine story. Mayor Hanes called the article cowardly, treacherous, sensational, jaundiced and smacking of jealousy, innuendo, distortion and untruths. (10) George Huddleston described the Post as a magazine in fear and critical of South. (10) Governor Wallace said the Post was a sorry authority on the truth. (15) Marshall said Post made no case as to their article of a football fix. Said Post gave no defense. (40) Former Georgia Coach (Wally Butts) contends Curtis resorted to lurid and defamatory articles about nationally known figure in an apparent last-ditch effort to bolster its sagging circulation which in turn would incerase revenue. (146)

The following are examples of the numerous telegrams, letters and telephone calls received by U. S. Attorney Macon L. Weaver after he called for an investigation of the Post and others connected with the football fix article. (153): (1) For the sake of common decency and fair play give it all you got. (2) The publishers of Post should be prosecuted by criminal proceedings to the fullest extent. (3) Delighted to learn the Kennedy administration is assuming its responsibility on the Post article. (4) Keep FBI on the investigation of the alleged Post fix. (5) We in Alabama appreciate the stand you are taking in prosecuting the Post magazine.

The Post must be getting pretty desperate to pump up a story like that and call it the most shocking sports scandal since 1919. (158) Man in the street backs Bryant. We honor and I believe Bear Bryant. (173) Muckraking is charged to Post. (176) Charges stretch imagination. (180) Chanting students declare, We Back Bear—Bear Plays Square—and To Hell with the Post. (188) The Post is hanged in effigy at the University of Alabama Student Union Building. (201) Alabama Senate denounces Post. (249)

### PREJUDGMENT OF THE CASE

S.E.C. Commissioner Bernie Moore said Butts' verdict should lift dark cloud hanging over football and the S.E.C. (1) Southern Sports writers tab Post's charges as too incredible to believe. (17) Alabama Attorney General Richmond Flowers said Alabama Legislature investigation uncovered nothing to substantiate the Post charges. (143) Donald F. O'Donnell, chief counsel for a U. S. Senate sub-committee looking into gambling in sports, said he had found no evidence of gambling in the Butts-Bryant case. (149) The alleged results of Bryant's lie detector test was announced by the coach and supported by Dr. Rose on a statewide television network. (149) If Post makes any sort of case against Bryant and Butts, my name is Perry Mason. (162) Governor Wallace criticized the Post by saying it was the sorriest authority on truth in this nation. (120) Southern sportswriter and editor demand quick action in fix story. (181) Charges are false in Jeff Beard's opinion. (187) Bama's trustees support Bryant. (189) Fairfield City Council adopts resolution backing Bryant. (189) Montgomery alumni back Bryant. (190) Support pours in for Tider Bryant. (196) Attorney General Flowers calls rigging charges political kettle of fish. (202) Alabama legislators clear Bryant and Butts of game rig. (204) Alabama Editors are saying Post has sunk to sensationalism. (207) U of A Alumni in Bullock County back Bryant. (245) Coaches from other schools and some of Montgomery's most prominent citizens went to bat for U of A's coach Bryant in Post hassle. (247) Alabama Senate denounces Post. (249)

In addition to the foregoing illustration of commonly held opinion in Alabama regarding the parties and this case, exhibit 10 once again demonstrates the tremendous undue publicity for an unusually long period that these matters have received.

Copies of correspondence from the files of Dr. Frank A. Rose produced in response to subpoena duces tecum were introduced as Defendant's exhibit 12. References are to numbers of each item of such correspondence.

### OVERWHELMING PRO BRYANT SENTIMENT AS SHOWN BY THIS CORRESPONDENCE

230 employees support you (Bryant) in the challenge you made on television concerning the vicious untruths that have been made about the University. We are not only proud to boast that we have the number one coach, but, that he is also a number one guy. (28) Bryant guided athletic program out of doldrums and brought about a truly amazing revival of spirit, enthusiasm and pride among those with whom he came in contact and possibly there are other men who could have accomplished this lightning rejuvenation, but I know of none. (30) It would be sheer fantasy to think Bryant could be disloyal. We in this area are behind Bryant 100% and will do anything we can to help. (31) Letter from Congressman George Huddleston, Jr. to Frank Rose—I assure you I will keep up my best efforts to see that Coach Bryant's name as well as the names of the University and of college football are cleared. (37) Letter from Congressman Frank W.

Boykin states Bryant is a great man who has gained success by honest work and effort and has earned the State of Alabama a billion dollars in good clean publicity. (38, 39, 40, 41) Letter from W. A. Edwards, Sylacauga Wholesale Grocery Company—Complete confidence in Bryant and pledge continued support of him. (This letter mentions a letter written to Bryant which he did not produce.) (50) The people of Alabama are extremely proud of its University and the image that has been created nationally through the leadership of a number one football team with a number one guy for a coach. (63) Carl T. Jones of G. W. Jones Consulting Engineers, Huntsville, Alabama —The dispensers of hate and throwers of mud do not rate any consideration on Bryant's part. All recognize and deeply appreciate the wonderful contribution Bryant has made to building strength of character in the young men of Alabama. We are extremely proud of Bryant and greatly honored to be in his corner. (This is copy of letter to Bryant, which Bryant did not produce.) (71) Bryant is person to be admired and has achieved greatness. (79) Full confidence in Bryant and hope this attempted smear will not mar the wonderful organization and the relationship that has been built up at our university. (85) I am behind you (Rose) and Bryant 100%. (89) If my boys play college football, I hope they play at the University under Bryant. Long may he live—and long may those things that he stands for thrive. (91) Milton Cummings President Brown Engineering Company, Huntsville—I am writing to compliment you (Rose) on your very fine statement in support of Bryant. I stand foursquare behind you, the University of Alabama and Bryant. (97) Loyalty and backing for Bryant and University. (104) Steve Moxley, President, American Cast Iron Pipe Company—All of us up here have confidence in your and Bear and wish there were something we could do to help. Bryant has brought the athletic program to an all time high and has done our alma mater a great service. (106) If I had a boy with football talent I would want him to play under you. (107) Raiford Ellis—Had I been fortunate enough to have a son play college football I would have insisted that he do so under you. It has been my privilege to encourage high school football players to play under you knowing they would receive training and direction second to none. (Copy of letter to Bryant, Bryant did not produce.) (120) William E. Sander, Fayette, Alabama—I resent the implications and have had a mad on ever since I heard about it. Your friends are behind you all the way and proud to have you as coach. (127) J. R. Harland —I convinced Bryant to attend and play football at University. It is certainly regrettable that he and his fine family have to be embarrassed by the actions of a hot check artist and deeply regrettable that the character assassin cannot be criminally prosecuted. (137) Copy of letter from W. S. Pritchard to Thomas W. Martin, Alabama Power Company refers to Mr. Martin making an offer to contribute to a fund to defray the expense of preparing Bryant's case and suggestion that the people of Alabama raise a fund for that purpose. (173) Letter by Jefferson Coleman, Director of Alumni affairs—Jefferson County Alumni have passed resolution. Montgomery is to do so and send copies to all of the 69 clubs in Alabama with the idea of all clubs passing resolutions of confidence and support of University and Bryant. The support by alumni has been tremendous. Bryant has received many letters, telegrams and calls. (176)

## OVERWHELMING BIAS AGAINST THE POST AS SHOWN BY THE ROSE CORRESPONDENCE

Resolution Springville, Alabama Chamber of Commerce —False, ridiculous and unfounded statements have been published in a national magazine which reflect on the character and integrity of Coach Bryant, the State of Alabama and all the people connected with the better interests of Alabama. Whereas we, the Springville Chamber of Commerce, believe that these unfounded and defamatory accusations reflected in the article could impede and hinder the possible relocation and foundation of industry and trade in the Springville area. These ideas implanted by this publication as to the character of the people of Alabama impair our ability to obtain new industry . . . this Chamber does resent these defamatory accusations. (14) Letter from Andalusia, Alabama on letterhead of attorney addressed to Senators Sparkman and Hill, Congressman George Grant and Attorney General Robert Kennedy urges prosecution of Post. Says the article is "libelous, dirty, absurd and criminal in nature. A full investigation by Congress, the FBI or anyone into the remarks in that article are not only welcomed, but demanded. In this way the total untruth of that article will be revealed. I cannot believe that our laws allow anyone to slander another in such a malicious way under the disguise of freedom of the press. Surely our criminal laws will bear down harshly upon the Post and if such laws do not now exist, there should be passed legislation to protect honest and good people from such malicious accusations in the future. (26) It is indeed regrettable that you are being so viciously attacked by what appears to be dastardly inyiduals. There is nothing worse than malicious misstatements, half-truths, rumors and idle gossip. (27) It seems a shame that you (Bryant) had to take a lie detector test to prove your integrity against a filthy magazine that seems to have an avowed purpose to destroy our Southern customs as well as our great Southeastern conference. (31) It's a shame that those with a talent to write have to dip their pen in poison and should they write something pleasant it would be like finding a gardenia in a garbage dump. Because some writers are deceitful and know their own hearts, they do everything within their power with their pen regardless of expense to damage the character of another. Such a one would do well to refer to the Proverb, O false witness shall not be unpunished, and he that speaketh lies shall not escape. (27) Letter from Congressman Frank W. Boykin—It seems terrible that Post would write such an article to try to tear down Bryant and the Alabama team but I understand they are in bad shape and maybe they need some sensational story to sell their magazine. It is a horrible thing and a terrible thing. It seems they are trying to tear down absolutely everything in Alabama. (38, 39, 40, 41) The latest article is so obviously fraudulent and malicious that it is down right insulting to the intelligence of the reading public. Every time one of these has come along, I proceed to boil over, cancel whatever subscription is involved and still feel quite frustrated that I can't fight back in any way. There is something basically wrong with our system which permits this type character assassination. It is criminal. You don't have to prove anything to me and your countless other friends, but perhaps this is an opportunity to finally strike back at this type of news coverage. (Copy of letter to Bryant. Original not produced by Bryant.) (66) Irresponsible journalists. (70) Copy of letter to Curtis Publishing Company—You can now be classified as a scandal sheet of the first water dealing in vicious rumors and malicious gossip. Apparently the new policy must be to completely discount accurate or truthful journalism or to give weight to the rights of individuals but rather to throw mud and hate in all directions no matter who or what it hurts. The latest article on Bryant is more than I can stomach. You are attempting to hurt one of the finest men ever to come to the State of Alabama. In view of my deep and sincere feelings on this matter and my complete and total disagreement with dispensers of hate in all walks of life including journalism I ask that you do not ever send me another copy of your publication. (72) Copy of letter to Curtis Publishing Company—Do not send me another copy of your publication. As it had been paid for, I was trying to endure it till the time ran out, but I'd rather lose what's due than have it in the mailbox, to make a straight trip to the garbage can. The fine men who ran the Post in the past must be spinning in their graves. It's become a despicable thing. (78) Letter from Wiregrass Writers Club, an affiliate of Wide World Writers Club—10,000 members, 200 at University, 200 at Auburn and members on every publication in Alabama—Post is committing suicide with its attitude toward people. Our club has 10,000 rotten complaints pending against Post. We moved Hibbs out, also Ross and Sherrod. There will be more changes until Post ceases to exist. Our club had many Post contributors. I pulled them all off. Not another word will our club provide Post. Also we have stripped Furman Bisher of his membership. He is out of our club forevermore. Bisher let a few Post sales corrupt him absolutely. Our club destroyed Colliers and Woman's Home Companion and some others. Our technique is simple but efficient. (81) It is difficult to find words to properly describe my feelings regarding the slanderous, prejudicial attack .... I feel that this attack is directed not only at Bryant, the University, its students and football team but at every man, woman and child in Alabama as well. (91) Steve Moxley, President American Cast Iron Pipe Company—Its standards of of journalism have fallen by the wayside. They are losing money and heading for bankruptcy, and to overcome this they are willing to stoop to yellow journalism and to wallow in the gutter if necessary to sell a story. (107) Sam M. Johnston, Jr., Mobile—It is a sad commentary on life when a man has attained such a high pinnacle in his chosen profession, as you have, to be maligned and libeled. Your reputation for integrity and honesty will overcome any assault on your character by sensational seeking malcontents such as the Post. We alumni in Mobile are with you 100%. (116)

### PREJUDGMENT OF THE CASE AS SHOWN BY THE ROSE CORRESPONDENCE

Resolution of Russell-Muscogee Counties University of Alabama Alumni Association distributed to all News media —Deeply resent and deplore the character assassination which has been purposefully committed. Feel certain that the position of Coach Bryant will be fully and completely vindicated when the facts are determined by the investigation now under way, and that these facts will reveal the charges which have been made against him as completely false. (1) Resolution of Montgomery County, University of Alabama Alumni Association, distributed to all News media—condemn, deplore and resent the character assassination purposefully committed by the incredible charges and insinuations. (4) Welcome a full and complete investigation that we are confident will fully vindicate the position of Coach Bryant and will brand and reveal the charges which have been made against him and the sinister motive behind them for what they really are. (4). Letter from President of University of Alabama Student Legislature accompanied by Resolution of Student Legislature—The student body accepted the resolution with tremendous enthusiasm at our pep rally. Hope this resolution and the many others that have been publicized will show entire nation the confidence, respect and faith in Bryant. Certain ridiculous statements have been published. Investigation will completely uphold the personal integrity and loyalty to University of Alabama. (6, 7) Press release and resolution by Jefferson County Alumni Association—Publicly deplore the untrue, unfounded and libelous character assassination made solely for selfish gain appearing in the article, The Story of a Football Fix. (10, 11) Resolution North Talladega County Chapter University of Alabama Alumni Association signed by Circuit Judge—We sincerely deplore the false, scurrilous and flagitious attack upon Coach Paul Bryant. (13) Resolution City Council of Fultondale, Alabama—It is evident that a conspiracy exists to discredit . . . Bryant . . . for the purpose of prejudicing legal action previously taken . . . slander, libel and false accusations . . . reflect on the University . . . the basis of allegations made by the said publication are shown on simple analysis to be cut from the whole cloth, fanciful, irrelevant, inconclusive, out of context, trivial and malicious . . . the campaign of libelous and slanderous attack . . . is unjustifiable character assassination in the extreme . . . the Saturday Evening Post is hereby called on to take all steps necessary to completely and publicly retract all of its statements and conclusions and to repair by any and all means required, the damage it has done and attempted to do. (16) Resolution Bullock County Alumni Association of University of Alabama—

We feel this attack . . . is untrue. We deplore the untrue, unfounded and uncalled for character assassination. (47A) Resolution of Madison County Alumni Association said to represent the thinking of 900 persons in that county states that the article has incited the alumni living in Madison County to the point where they have demanded that an expression be made of complete faith in Bryant and that Post be admonished severely for its unwarranted and unjustified attack on Bryant and the University. Resolved that every effort should be made to cause the Post to pay the full penalty allowable by law for the scurrilous attack. That the Post printed the article without any responsible foundation of fact and was an unparalleled abuse of the power and freedom of the press. (Copy sent to "Huntsville Times") (18, 19) Letter from Jefferson Coleman, Director of Alumni affairs, thanking Radio Station WDAK, Columbus, Georgia for carrying a strong supporting editorial on the station's broadcast. (21)

Congressional Record—Remarks by Congressman Armistead Selden—I condemn the vicious and irresponsible . . . attack on Coach Paul Bryant. (33) The charges contained in the Post article are little short of ludicrous. Those of us who know Paul Bryant and his devotion to the best interests of the University of Alabama and collegiate athletics generally are amazed and shocked that any magazine could reach to this low level of journalistic irresponsibility. (33) The article is replete with half-truths and vicious innuendo based on the flimsiest of testimony. (33) The President and trustees of the University expressed complete confidence in Bryant following an investigation of the charges and this reflects the feeling of the people of Alabama regarding this unwarranted attack. (33) Letter from Bill Nichols, State Senator, Talladega County and former Auburn football player, enclosing an editorial from the Talladega News entitled, Don't Believe It. Agrees with editorial and states Post has stooped to lowest form of journalism, that sympathy and understanding of Auburn people are with Bryant and that Legislature most anxious to investigate and to completely vindicate Bryant. (35) May I offer you any support which I possess in the athletic crisis which has erupted because, in my humble opinion, of jealousy and envy on the part of a neighboring state and of the desire to crucify a great man on the part of a national publication. (43) Bryant didn't even have to deny it to me, much less take a lie detector test. (43) Letter from L. B. Whitfield Jr., President, Alaga Syrup Company and Whitfield Pickle Company, expresses feelings of Bryant's many friends at Alaga and Whitfield.—We are certainly burned up about this situation. It is just about the lowest down lousiest deal I have ever heard of a magazine, newspaper or any other publication stooping to. (45) (Letter says it encloses copy of a letter to Bryant which was not produced by Bryant.) (45) Letter from C. R. Floyd, President Floyd & Beasley Transfer Company—I can't say that all our employees (230) are Alabama fans, but they do 100% support the action to vindicate Alabama and its coach of such vicious untruths. It's a shame that some people can never dip their pen in anything but untruths, garbage and that which can damage the character of a person and the image of a school or symbol. (63) Letter from Ernest E. Armstrong, partner, Sterne, Agee & Leach—I hope and pray we will be able to find some way to stop this type of irresponsible character assassination. (65) Carey Cox, General Manager, Cox-Dobbs Chevrolet Company, Alexander City—Congratulate Rose and Bryant on a masterful job of presenting the true facts of a vicious situation on television. All loyal friends of the University recognize this situation for what it really is and are 100% behind Bryant. (68) Alumni and friends in Florence area are strictly behind Bryant and Rose in flare-up between the University and the Post. People seem to think it is a ridiculous thing for the Post to have done, and they have absolutely no faith in the article. (75) I believe in you (Bryant) 100% and know that you will be vindicated in your denial of the slanderous accusations that have been made by irresponsible people who are seekers of sensationalism rather than the truth. (77) John Patterson, Former Governor,—I know that it is completely untrue and every person that I have talked to about it believes that it is untrue, and is mad as the devil at the magazine. (83) It is obvious that certain groups in Georgia are determined to degrade our school and coach, using every foul tactic possible. (87) I know in my heart that the charges are completely false and feel that those who make the charges know that they are false. (91) Ed Leigh McMillan, President, T. R. Miller Mill Company—I believe every word that Paul said in his television statement. (93) I am utterly astounded and flabbergasted at the article. I don't believe in all of my sixty years I have ever seen or heard of a more dastardly article that appeared in print. (95) This is a most regrettable, vicious and unwarranted thing. (99) Hill Ferguson—One of the best ways to defend Bryant is to harp on the Six Thousand Dollars which our Atlanta friend is getting out of it. (100). I am one of those in Alabama who feel confident that you did not indulge in such action. (115)

Read with disgust . . . the whole story and the situation around it is ridiculous. All of us up here have total faith in your dedication, integrity, honesty and fair play. We do not believe a word of this trash. It comes from a magazine that years back had a good reputation and was one that we were proud to receive in our homes. But its standards of journalism have fallen by the wayside. They are losing money and heading for bankruptcy, and to overcome this they are willing to stoop to yellow journalism and to wallow in the gutter, if necessary, to sell a story. (This is copy of letter to Bryant. Bryant did not produce original.) (107) Letter from Pat Richardson, Huntsville Attorney, enclosing editorial from Huntsville Times—In such cases it would be usual for the Times to urge its readers not to form opinions against the men involved until all the evidence has been sifted. In this particular case we believe such advice is not needed. If we are any judge, the public has studied such facts as the magazine has presented and is of the firm opinion that the two men are innocent. We share that view. (112) Bryce Hospital is filled with paranoics who have fixed delusions and even under lie detectors those delusions are still fixed. I suggest that Mr. Burnett be investigated as to his eccentricities. You are above such accusations that have plagued you and nothing can shake our confidence in you. (Copy of letter to Bryant. Bryant did not produce it.) (117) Bradley P. Cartwright, Decatur—It made me terribly mad to think that such sorry yellow journalism was allowed to be published in our country. We now have outstanding coach in the country and the old jealous monster from Georgia is raising its head. (122) In Tennessee Valley many Tennessee and Vanderbilt alumni have said this is the most ridiculous article they have ever seen printed and they hope the magazine will be made to pay dearly for this. (Copy of letter to Bryant. Bryant did not produce original.) (122) Ralph L. Chermack—Saw game and talked with players and coaches and saw no indication of having advance information. (Copy of letter to Bryant who did not produce original.) (124) I know Coach Wally well enough to know that he would not, under any circumstances betray the University of Georgia. If Wally was awarded better than $3 million after the testimony against him in Atlanta, how much do you figure Bryant will get when everybody in Alabama is behind him. He's a cinch to win his case against the Post. (180)

Correspondence from the files of the Athletic Department of the University of Alabama was subpoenaed and that which was produced was introduced as defendant's exhibit 13. References are to the numbered items making up that exhibit.

### BIAS IN FAVOR OF PLAINTIFF AS SHOWN BY THIS CORRESPONDENCE

We are with you 100 per cent. (1) Telegram from ex-Governor, John Patterson. I'm with you. (2) With you 100 percent. (3) This section of the country is behind you . . . you have given our boys what they need. (4) Don't let these people get you down, your friends at Montgomery are behind you. (5) We are with you all the way. (6) Telegram from State Representative, Joe Goodwyn. We in Montgomery 100% and unconditionally behind you. There are always people who are shooting at the man on top for ulterior motives. Give 'em hell Bear. (8) With you Bear. (9) Best of Luck, 100% for you. (10) Glad we have you to defend SEC policies and honor. War Eagle and Roll Tide. (11) Best regards to the finest coach in U.S.A. . . . multi thousands are with you. (16) With you 1000%, signed Red Elephant Club of Mobile. (17) Saddens us to think anyone could print such a thing of a man that loves boys and sports as you do. (18) 100% for you—Saturday Evening Post has done you terrible injustice. 19) Article disgrace to you, University of Alabama and Southeastern Conference. Behind you 100%. (20) With you 100%. God bless you. (21) I unconditionally support you because you have instilled pride into the team and school that did not exist when I was there. You are a gentleman and a football scholar. (22) Behind you 100%. Keep punching. (23) We are backing you 100%. Karl Harrison. (24) You are the greatest. We are with you all the way. (25) Highly indignant at attempt to smear your reputation . . . you have our continued whole hearted support. (26) If we can help in any way, let me know. (27) Stay hard nose Coach (28) Birmingham Graduate Chapter of Phi Gamma Delta passed resolution supporting you, Dr. Rose, and the University of Alabama. (29) Letter from President Cullman Broadcasting Co., We support you all the way . . . Good Luck! Give 'em Hell. (31) Everyone is behind you 100%. (39) You have my complete confidence. (42) Letter from president Crenshaw County, Alabama Alumni Association. The Crenshaw County Alabama members are 100% behind you. (48) Letter from president First National Bank, Alexander City, Alabama, states that many would do all they could for Bryant and that everybody is supporting him, including Auburn people. The secretary who typed letter says Bless your Heart. (49) You have my wholehearted support and if, in any way, I can be of help, please call on me. (52) The people of the Mobile area are behind you all the way. (59) Letter from pastor Crestview Baptist Church, Prattville, Alabama. Bryant is perhaps greatest coach in America today and he is being criticized because of his success. May God bless you. (61) Letter from Mrs. Thomas D. Russell, Alexander City, Alabama. She and husband proud of Bryant for his actions and that friends have never doubted him and are backing him in every way they know.

(63) I believe in you. (67) Terribly upset that Bryant should be pilloried by means of vicious journalism. Behind Bryant 100%. (77) I number myself among your unknown friends—only one of untold thousands across the State. (83) Letter from Denson Franklin, Minister, First Methodist Church, Birmingham, Have complete faith in you. (85) We have the utmost confidence in your honesty and integrity and no amount of vile, irresponsible journalism can shake this confidence. (87) Letter expressing desire to add writer's voice to the many thousands of other Alabama Alumni and fans in general. Expresses pride in Bryant and states the charges against Bryant have brought forth a storm of indignant protest from all thinking people in the area. (91) Letter from Rabbi expressing best wishes and prayers that Bryant's integrity will be speedily vindicated. (93) Letter from President Brown Engineering Co., Huntsville. I have full faith in your integrity . . . and wish to stand behind you in this hour . . . all the people at Brown Engineering Co. are in full support of you. (97) Teacher at Tuscaloosa High School. Every student and teacher at Tuscaloosa High School that I've talked with is behind you 100% and all of us admire and respect your courage and integrity. (104) As far as I'm concerned you are the greatest coach in the country, and I know you would never even think of the things you are accused of. (106) I want to assure you of my personal loyalty and backing. I will be happy to assist you in any way I can through public word and personal endorsement. Let me know if I can help you. You are number one on my books. (108) Zach Rogers Jr., Mayor of Butler, Alabama. Every Alabama alumni I have heard discuss the matter is 100% behind you and they deeply resent the vicious attack on you . . . (113) You are a man of the highest caliber. We all owe

you a debt of gratitude, that we can never fully repay. (123) . . . your friends and the alumni are strictly behind you 100%. (125) Please accept this as our unlimited vote of confidence in you as a man, coach, our football team and the University of Alabama. (127) We are 100% behind you. (129) My friends and I in Mobile have the utmost confidence in your integrity and good sportsmanship. We all stand behind you. (131) Carl Booth—Circuit Solicitor, Mobile—You know all Alabama is for you, so fight them with all you have and we are behind you 100%. (133) Everyone is proud of you and what you have done for Alabama. (135) We Alabama supporters stand behind you 100% in fighting this vicious slander . . . Let me know if there is anything I can do to help you in combating these lies. (137) Without equivocation everyone I know and I have talked to are with you and for you. Most of us are a little frustrated as they want to help, but don't know how. (144) Don't let them ever forget you are the best coach in the country. (148) Leonard C. Shelton, Vice President, First National Bank of Birmingham. My entire family . . . sympathizes and are 100% behind you. signed—Leonard C. Shelto I agree with him, Coach. signed—Edwin Wilham, Secretary to Mr. Shelton. (157) We and thousands of others are with you all the way and believe in you, and we fervently hope you bring the SOBs to their knees publicly. (159)

### INTENSE PREJUDICE AGAINST POST AS SHOWN BY THE ATHLETIC DEPARTMENT CORRESPONDENCE, DEFT'S EXH. 13

They (Post) are trying to use Bryant to bring them out of a rut. Dear Coach: Saw you on TV. As an attorney, suggest you now file suit against Saturday Evening Post for maximum amount possible. If they deal in slander let's get that Yankee money. (7) Small people can always find a way to criticize a man that walks tall. (9) To heck with the Post and on with the Tide. (13) All Alabamians have complete faith in you. Sue Hell out of Yankee Magazine. Telegram from former Lt. Gov. Guy Hardwick. (14) Long live Wally Butts, down with Griffin, Furman Bisher, the University of Georgia, Georgia Tech and especially the Saturday Evening Post. Roll Tide Toll! (16) Letter to President, Curtis Publishing Company. In view of the fact that your subscriptions and circulation is off to the point that you are now publishing a scandal sheet that is biased and untrue and completely without fact, and in view of the fact that you have seen fit to make every effort and attempt to criticize, abuse and ruin the reputation of our country, our State in particular, our university and its fine football coach, please stop sending the Saturday Evening Post to my house. I have two children who have been protected from seeing vileness in print, and further I wouldn't even want so simple an individual as the postman to know that I subscribe to such filth. My subscription is paid up for several years. You just keep the money, you need it worse than I do and you will need it and all else you can gather to pay the libel suit you will lose to Coach Bear Bryant. (57) I resent the hell out of those bastards. (79) I'm just sorry you are having to go through all this unadulterated crap, but I feel confident that Bisher and company will get it in the end and that will be a great day as far as I'm concerned. I look forward to it. (81) Those people up there really hate to see a team from Dixie win. They know that writing these type of articles is the only way they can touch us. (106) Zach Rogers Jr., Mayor of Butler, Alabama. Every Alabama alumni I have heard discuss the matter is 102% behind you and they deeply resent the vicious attack on you by the Saturday Evening Post. (113) It makes me so sick I could throw up. (115) Letter to editor of the Post. Your first article about Coach Paul Bryant has caused the re-evaluation of the propriety and sincerity of your writers and editors. The uncalled for attack on the City of Birmingham, a part of which is true and correct, but still a story that serves no useful purpose to anyone, and now, the story that breaks the camel's back, Alabama versus Georgia, The Story of a Football Fix. This I cannot and will not tolerate . . . you can safely consider yourself a bunch of prejudiced halfwits who will go to any extreme to make a buck. (119) Everyone I have talked to is outraged at this malicious and unfounded filth. (137) It is a small thing to do, but we are cancelling our subscription to that piece of mongrel journalism--the Post . . . we fervently hope you bring the SOB's to their knees publicly. (159)

### PREJUDGMENT OF THE CASE AS SHOWN BY THE ATHLETIC DEPARTMENT CORRESPONDENCE. DEFT'S. EXHIBIT 13.

Charges are ridiculous, stupid and completely false. (1) I had no idea these vicious charges were true, since your statement, the people of Alabama are even more certain of the fine coach we have at Alabama. (5) Even staunch rabid Auburn supporters have confidence in your integrity and believe Post report false. (11) I know that all this stuff is untrue. If I can be of any service, call me. This in telegram from State Representative Tram Sessions. (12) I think it is a bunch of bull, am behind you as best as Auburn man can be. (15) Gross injustice, exaggeration, lies, unfair criticism. (16) Editorial presented on radio station WKUL, Cullman, March 19, 1963. States that article in Post concerning brutality in football was the result of sportswriters and poor-losers in Atlanta trying to get even with Alabama for beating Georgia Tech and for Tech player being hurt. Refers to Bryant's first suit and states We hope the Bear gets every cent he asks. The editorial continues to state that the first article was not enough to satisfy the Post and they continued in a vicious article to attack Bryant. The editorial ends by saying The People of Alabama are not going to buy the Post article. The People of Alabama know the Post story for what it is. The People of Alabama are going to stand solidly behind Alabama's Coach Bear Bryant and to the sore heads in Georgia and up North, the people of Alabama have one word, nuts. (32, 33) Another Editorial by Radio Station WKUL, Cullman, dated March 21, 1963. Suggests ulterior motives on part of Burnett in reporting conversation of Butts and Bryant, suggests a wire tap on Butts phone and a conspiracy to get Butts and Bryant. The editorial also states that if Burnett overheard a conversation it would have been so technical that he could not have understood. It further pronounces it to be proper for Bryant to get all the information he could from Butts and states that Bryant obtained all information needed by scouting movies, etc. It ends by stating no slur by the Post, no hasty article by the Post calling this intelligence a fix is going to make the people of Alabama fall out with Bear Bryant. To the University of Alabama and to Coach Bryant this station says, Hail, the Bear, King of Football. (34, 35) I have not heard one single person say that they believed the article. (39) President, First National Bank of Dothan—We are all behind you. We feel the charges which have been made against you are ridiculous. (41) Letter that author of article was lying. (45) Telegram from Snitz Snyder, Coach, Bessemer High School, calls the article a smear campaign. (46) False claims, accusations or just plain *lies.'*(52) We do not believe one slanderous word, and even if by trickery some of those so and so's make it appear to be as stated, we still won't believe. (54) It is sad when a magazine is allowed to print such trash. (59) We express our regret . . . and we are behind you all the way and do not believe a word of it. Offers to help at any time. (65) Irresponsible reporting . . . allow me to express my 100% backing and disbelief of these flimsy charges. (69) Letter from Auburn graduate—You have an ally on the other bench except when you play the Tigers and I sincerely hope this insane publicity does not hinder the fine job you . . . have been accomplishing. Only people jealous of your success give any credence to this publicity. (69) If there is the slightest thing we outsiders can do in this Post's darn lie proposition please advise. We are more than ready to go to bat. (75) It is regretful that such trash as that presently being circulated should be allowed to invade men's minds. However, when a person is on top, there are always men with very narrow viewpoints throwing rocks from the bottom. (89) I believe everything you have said. The people of Alabama admire you for standing up and letting them know everything said about you is untrue. The Alabama team was great and nothing a sorry magazine can write will ever change my opinion. I think Governor Wallace summarized the article best when he said The Saturday Evening Post is the sorriest authority on the truth. (97) Letter from J. Finley McRae, Chairman of Board, Merchants National Bank of Mobile. Very much disturbed and even incensed over the charges. Not for one second have I given any credence to the charges. (101) I resent deeply the implications in the Post article; when I read it, I was extremely angry at the injustice of it. However, the charges are so ridiculous that I imagine the Post will soon be out of circulation. I hope so! (103) Beyond a doubt it is the most ridiculous article ever put into print. (109) To accuse one falsely and to attack one's integrity without adequate foundation is inexcusable and I would like to express my full support for you in your endeavors to disprove these libelous accusations. (111) I do not believe any of the allegations that have been made against you and Coach Butts. You have my full support . . . in an effort to minimize the effects of the vicious article that was written against you in the Saturday Evening Post. (117) Letter to Editor of the Post. This article contains errors, lies, sensational presumptive statements, all the degradation of one of the finest Southern gentlemen who ever walked upon a football field. Consider too the abuse that you have perpetrated on the freedom of the press, for you shall most assuredly be censured by the proper court proceedings. (119) I don't believe a word of that article in the stinking Saturday Evening Post. (123) Frankly, coach, the people in this area have no confidence in the article. (125) Everyone I have talked to is enraged at this malicious and unfounded filth. It is character assassination in its lowest form. (137) Letter signed by forty members Alabama Alumni Association of Andalusia, Alabama. We realize that when a person becomes universally recognized as the most outstanding and successful individual in his profession, he will be set upon at times by small minded envious people who seek to drag him down to their level. It is in this light that we regard the scurrilous and unfounded attacks upon you . . . (142) Allen Johnson, Birmingham. I was in the Florida Keys when that scurrilous story about you broke. Needless to say I don't have to tell you I don't believe any part of it and I hope you and Wally Butts nail the instigators of this malicious action to the cross. I know you are getting

100% support from everybody. (146) Personal assurance that I resent the scurrilous attack. (150) I know there is nothing to the charges set out in this article. (153) If there is anything in my humble way that I can possibly do for an honest, wrongfully accused Paul Bryant, it will be an honor and my privilege to do so. (155) Mobile, Alabama. Judge Daniel T. McCall Jr., Circuit Judge. Your appearance on TV and forthright denial of the false and venomous charges made by the Saturday Evening Post was most effective. Evidently you and all of us connected with the University are confronted with a malicious design of nation wide extent to do harm to you, the athletic program and our school. The fight is not yours alone. All right thinking people will give assistance gladly to resist this affront and abuse. (31) Francis Pratt, Superintendent, Bibb County Board of Education. Thousands of former University of Alabama students as well as all of us in the A Club feel that you are the subject of a most vicious attack because of envy and sensation seeking people. I hope and trust that the Congress of the United States will pass laws to protect individuals from such insidious attacks by the press . . . cheap sensational copy by a magazine that is almost bankrupt. (34, 35)

Defendant's exhibit 14 is correspondence both to Athletic Department and Dr. Frank A. Rose originating from outside Alabama. This demonstrates that the sentiment in immediately surrounding States is as shown to exist in Alabama.

## THE TESTIMONY OF RAY ACTON, ASS'T. U. S. ATTORNEY

Mr. Acton testified that the U. S. Attorney's office had received approximately 24 or 26 telegrams from various people. He said that in response to a subpoena duces tecum issued by defendant his office had requested the

Justice Department to return the telegrams which had been forwarded there, so that he might comply with the subpoena but as yet had not received them.

He further testified that the general tenor of the telegrams was a demand or request that the U. S. Attorney investigate the question of a violation of Federal Statutes upon the part of the Post.

### SUMMARY OF PLAINTIFF'S EVIDENCE

The plaintiff's evidence in opposition to defendant's motion for change of venue consists entirely of affidavits of the following: William E. Davis, Clerk, United States District Court; J. Edgar Bowron, Presiding Judge, Tenth Judicial Circuit of Alabama; Dave Archer, Circuit Judge, Madison County, Alabama; Francis Hare, Attorney; John W. Vardaman, Attorney; William Bew White, Attorney; George Rogers, Attorney; J. R. Forman, Jr., Attorney; John D. Hill, Attorney; William L. Longshore, Attorney; R. Macey Taylor, Assistant United States District Attorney; Winston B. McCall, Attorney for plaintiff; Joseph F. Johnston, Attorney; William S. Pritchard, Attorney for Plaintiff; Maurice Bishop, Attorney.

Some of the affidavits are by attorneys who, in the course of their practice and private life would have little occasion or opportunity to come in close contact with persons who would be jurors. For example, William Bew White and Joseph F. Johnston. Others are from attorneys who would have an interest in having a case of this type tried by a hostile jury and would not like to see a precedent established for changing the venue of a case such as this. For example, Francis Hare, who is attorney of record for the plaintiff in that case styled Joe Lindsey vs. The New York Times, which is now pending in this Court and in which the Plaintiff seeks $500,000.00 damages for an alleged libel.

Two basic principles are common to the affidavits and are the real substance of the affidavits, that is, that Your Honor will do all that is in the power of any judge to do to afford the defendant a fair and impartial jury by allowing full and extensive voir dire examination of the jurors and secondly, that litigants in civil cases in this district generally receive fair trial. This defendant and its attorneys and each of the atterneys who gave affidavits in support of the motion for change of venue know that Your Honor will do all that any judge could do to insure a fair trial, but the evidence shows that nothing a judge can do could overcome the widespread bias that exists.

None of the affidavits show any facts that go to the real heart of this matter; that is, that this is a unique case and the situation that exists with regard to this case as shown by the defendant's evidence makes this a case unlike the ones referred to in the affidavits where a fair trial is generally accomplished and makes it a case that should be transferred to a location where the jurors can be neutral in order to afford the defendant a fair trial.

The plaintiff's affidavits state that prospective jurors would reveal any fixed opinion that they may have, but the affidavits do not go into facts to refute what is shown by dozens of letters written by residents of the State of Alabama to the plaintiff and to Frank Rose wherein the writers express a desire and a willingness to help the plaintiff in this cause. These letters show on their face that they are from the same high caliber people that the plaintiff's affidavits say would be called for jury service in this district. These letters show that there are large numbers of people throughout the state who would want to help the plaintiff to such an extent that they would conceal their true feelings when being questioned on voir dire.

The affidavits do not go into the effect that unusually extensive newspaper coverage during the trial would have upon the person sitting as jurors whereas it can be readily seen from the newspaper exhibits offered by defendant that there will be extraordinarily extensive front page coverage of the trial while it is in progress if it is tried in Alabama.

The statement by Col. Pritchard which cites the Butts case in Atlanta as to the witnesses that may be expected to be called shows that twenty of the witnesses reside in Georgia and five in Alabama, and that those five Alabama residents are persons who would be willing to travel at the plaintiff's request to any place at which the trial may be held.

## Conclusion

The above and foregoing summary of the evidence does not in anywise contain a summary or a full condensation of each item of evidence introduced by the defendant. It is as brief a summary as could be made of the evidence showing the three main categories of prejudicial opinion that have been employed in an effort to aid this Court in its consideration of the evidence, that is, "overwhelming bias in favor of Paul Bryant", "overwhelming bias against the Post"; and "prejudgment of the case."

There are dozens of news articles contained in Exhibits 3-a through 3-e, Exhibit 7, Exhibit 8, Exhibit 9 and Exhibit 10 that are not summarized in the three categories as they purport to be factual accounts, but they speak for themselves to show the extraordinarily wide and extensive attention given to this case in the newspapers throughout the State, and they show that much of this attention has been headline and front page attention, and has been virtually continuous and virtually unanimously prejudicial to defendant.

The defendant did not undertake to quote from the letters received by Paul Bryant and Dr. Frank Rose all the expressions of desire or willingness to help the plaintiff to prevail in this cause. An examination of the letters will reveal that that desire or willingness to help the plaintiff exists throughout the State and that it would be reflected in any verdict returned by a jury in Alabama.

There may be some repetitions in this summary, but the fact that there is reflects the widespread repetition of the thoughts, ideas, expressions, feelings and fact that has occurred throughout the State and has contributed to and is evidence of the unique situation that exists that would make it impossible for defendant to have a trial before an impartial jury in this State.

Respectfully submitted,

Pepper, Hamilton & Sheetz,
Gallop, Climenko & Gould,
Beddow, Embry & Beddow
By T. Eric Embry
Attorneys for Defendant

# APPENDIX B

## Order of Court of Appeals Denying Petition

IN THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

No. 21152

THE CURTIS PUBLISHING COMPANY,
*Petitioner,*

*versus*

HONORABLE H. H. GROOMS, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA,
*Respondent.*

Petition for Writ of Mandamus from the United States District Court for the Northern District of Alabama.

(January 13, 1964)

Before—CAMERON and WISDOM, Circuit Judges, and AINSWORTH, District Judge.

BY THE COURT:

IT IS ORDERED by the Court that the Petition for Writ of Mandamus filed in the above entitled and numbered cause be, and the same is hereby, DENIED.

(Original Filed—January 13, 1964)

# APPENDIX C

## Opinion on Motion to Transfer

IN THE
UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE.
NASHVILLE DIVISION
CRIMINAL NO. 13,383

UNITED STATES OF AMERICA,
*vs.*
**JAMES R. HOFFA**, *et al.*,

An order was entered in this cause upon December 24, 1963 with regard to various pending motions heard by the Court upon December 20, 1963. In that order action of the Court was reserved upon the motions made upon behalf of the respective defendants for transfer from this District for trial in accordance with Rule 21(a), Federal Rules of Criminal Procedure, 18 U.S.C. Having now considered further the motions to transfer together with the evidence and exhibits submitted in support of and in opposition to said motion and the arguments and briefs of counsel, the Court is of the opinion that the motions to transfer should be sustained and that further proceedings herein as to each defendant should be transferred to the United States District Court for the Eastern District of Tennessee, Southern Division, sitting at Chattanooga, Tennessee.

A review of the nature and extent of the publicity within the territorial extent of the United States District Court for the Middle District of Tennessee discloses that during the period since the indictment of these defendants and particularly during the period since November 18, 1963, the date upon which an order was entered setting this case for trial upon January 6, 1964, the publicity has been quite intense. An impartial review of this publicity can only lead to the conclusion that it has been prejudicial to each of the defendants herein with respect to the matters upon which he here stands for trial. A statement of the prejudicial content of the publicity will not here be made as any such statement might form the basis of repetitious publicity of such matters at a time when the Court is seeking to avoid the effect of such prejudicial publicity upon the selection of a trial jury. A further statement of the prejudicial content of t publicity will be included in a supplemental opinion of the Court to be filed at a time when it cannot by repetition affect the selection of an impartial jury. Suffice it to say that publicity that would be logically considered prejudicial to each of the defendants has appeared almost daily within the District in recent weeks, receiving front page consideration upon most days and often appearing in the lead headlines of the day in the two daily metropolitan newspapers at Nashville, Tennessee.

The importance of trying this lawsuit within the district in which the offenses charged are alleged to have occurred has borne heavily upon the mind of the Court. The Court has carefully considered attempting to draw a trial jury from the District at large or from another division within this District in an effort to assure an impartial panel. However, the record in this cause discloses a remarkable coverage of each county in the entire Middle District of Tennessee by the two Nashville newspapers that have so fully and prominently covered every aspect of this case as well as many related and unrelated matters directly and indirectly involving one or more of the defendants. Only two out of the entire 32 counties making up the Middle District of Tennessee have less than 10% daily home coverage by the Nashville newspapers. The Sunday coverage is even more extensive with only one county having less than 10% coverage. Only 12 out of 32 counties making up this District have less than 40% daily coverage. Radio and television content and coverage are not so precisely reflected in the record, but appear to be quite extensive. It is apparent to the Court that a jury panel representative of a fair cross section of the District could not be drawn at this particular time without a large percentage of them having been recently exposed to intensive publicity reasonably expected to influence them in their attitudes toward these defendants with regard to the particular charges on which the defendants here stand for trial.

The Court has likewise carefully considered reserving any decision upon the motions to transfer until after examination of the jury panel on voir dire. However, this course could cause a substantial delay in the trial if it were not possible to select an impartial panel or should the Court determine, following the voir dire, to grant the motion. Even though a nominally impartial panel should be selected, in view of the nature and extent of the publicity here involved, the case might proceed under the cloud of possible error. In safeguarding the right to a fair trial the appellate courts have reversed the trial courts for a denial of a change of venue, or in the alternate a postponement, where publicity has been a somewhat similar nature and extent to that here encountered. See *Irvin v. Dowd*, 366 U. S. 717; *Delaney v. U. S.*, 199 F. 2d 107; *Briggs v. U. S.* 221 F. 2d 636.

Fundamental to our system of justice is the right of any person accused of a crime to have his guilt or innocence decided solely on the basis of evidence produced in court under the safeguards of a fair procedure and under court supervision. Equally fundamental, on the other hand, is the right of freedom of the press. Occasionally these two rights may come into conflict, as when before a trial widespread and intensive publicity prejudicial to a defendant is given to a case in the area from which the jury is to be chosen. The courts of this country have resolved such conflict not by seeking to restrict publicity and thereby abridging the freedom of the press, but rather by securing a jury removed from or uninfluenced by the publicity accorded this case. In this situation the Court may either postpone the trial of the case and the selection of the jury until the effects of the publicity have abated, which here might involve a substantial delay of the trial, or may, upon motion by the defendant, transfer the case to a court outside the area of intensive publicity. A recognition of the importance of according every person accused of a crime a fair trial will itself impose a restraint upon those conscientiously bearing the responsibility that goes with a free press so as to make our system of justice one of mankind's most noteworthy achievements.

In the present case the Court is of the opinion that a further postponement of the trial would not be in the best interests of justice or a fair trial for all parties. The indictment in this case was returned May 9, 1963. A delay of eight months has already occurred in the trial of the case due largely to intervening appellate procedures.

For the reasons here stated, the Court has therefore concluded to exercise its discretion to grant a change of venue. In so doing it will be possible to achieve both a prompt trial and a trial before an impartial panel of jurors. In so doing this case may proceed promptly without laboring under any cloud of error. In so doing the rights of these individual defendants to a fair and impartial trial can be assured in accordance with the ideals of a free and open society that prizes both the constitutional right of freedom of the press and the constitutional right of each individual charged with a crime to a trial before an impartial jury of his peers. This case will therefore be transferred to the United States District Court for the Eastern District of Tennessee, Southern Division, sitting at Chattanooga, and the trial to remain set commencing on Monday, January 20, 1964, at 9:00 o'clock a.m. EST.

An order will enter accordingly.

Frank W. Wilson

United States District Judge